

INSIGHTS INTO ISLAMIC THOUGHT

Volume III

Sayyid Abul A'la Maududi

Translated by
Dr. Parvez Mandviwala

CONTENTS

| | |
|-------------------|---|
| Translator's note | 5 |
|-------------------|---|

Section 1

| | |
|---|---|
| Limits and Sources of Islamic Legislation | 7 |
|---|---|

- | | |
|--|---|
| • Scope of Legislation in Islam and the status of <i>Ijtihad</i> therein | 9 |
|--|---|
- | | |
|--|----|
| • The Objections raised by a Hadith-denier and The reply given | 19 |
|--|----|
- | | |
|------------------------------------|----|
| • Mr. Smith's letter and its Reply | 25 |
|------------------------------------|----|
- | | |
|---------------------------------------|----|
| • <i>Ijtihad</i> and its Requirements | 33 |
|---------------------------------------|----|
- | | |
|---|----|
| • The status of wordings and spirit in <i>Ijtihad</i> | 39 |
|---|----|
- | | |
|---|----|
| • Legislation, Consultation and Consensus | 43 |
|---|----|
- | | |
|--|----|
| • The Proper Method of resolving disputes in the Islamic State | 53 |
|--|----|
- | | |
|---|----|
| • The status of Sunnah as a source of Law | 67 |
|---|----|

Section 2

| | |
|--------------------|----|
| The Wisdom in Deen | 81 |
|--------------------|----|

- | | |
|--|----|
| • Consideration of Needs and Expediencies in Islam- its Rules and Principles | 83 |
|--|----|
- | | |
|-----------------------------------|-----|
| • The Status of Diplomacy in Deen | 101 |
|-----------------------------------|-----|
- | | |
|----------------------------------|-----|
| • Backbiting and its injunctions | 115 |
|----------------------------------|-----|

- Backbiting: A Decisive Argument 131
- Backbiting- the other side of the debate 139
- Two important discussions 145
- Islam and Social Justice 171

Section 3

Islamic Laws and Commands 189

- The Issue of an orphaned grandchild's Inheritance 191
- The Questionnaire of the Family Law Commission and its Reply 211
- Is the meat of the animal slaughtered by the People of the Book Permissible or not? 235
- Fundamental Human Rights 269
- Imam Abu Haneefah's ruling on the issue of Caliphate 289
- Imam Abu Haneefah's ruling on issue of Armed Rebellion 319

Section 4

Miscellaneous 339

- What was the actual purpose behind Imam Hussain's martyrdom? 341
- The Fate of Western Nations- An Eye-opener 355
- How should the Islamic Movement progress in the Islamic World? 369

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Translator's Note

To Allah is due all praise and gratitude, who is the Lord of the Worlds.

Peace and blessings be upon His trustworthy messenger, Prophet Muhammad ﷺ.

It has indeed been an honour and privilege to translate this book. I have tried my best to keep this book as lively as I could; resorting to a flowing translation instead of sticking to a verbatim in English. This task is itself difficult because I was required to deviate from the idioms and phrases used in the Urdu text and, at the same time, convey the essence of those idioms in English keeping the intention of the author intact.

Although it is the ubiquitous case with all translations that the emotions and depth of words tend to get 'lost in translation', this is all the more pronounced with the Qur'an and the Hadith. These are unmatched in the richness of their language and are hence inimitable; making them extremely difficult to translate. As for the Qur'an passages interspersed in this book, I have mostly referred to the translation offered by Zafar Ishaq Ansari, 'Towards Understanding the Qur'an' and the one by Saheeh International. Translating the aHadith (plural of Hadith) is much more tedious and quite delicate an exercise because of the immense responsibility it entails. The concise sentences used by Prophet Muhammad ﷺ and the cherry-picked words the Prophet has utilized can never be rendered in any other language. I request the reader to not expect a perfect translation of the Hadith in any book. Having said this, I have tried my best to scout available

translations of relevant aHadith from other sources to be as close to the actual meaning as possible, but errors are inevitable. Hadith scholars append even Arabic Hadith narrations with *Au kama qala Rasool Allah* ﷺ ('or something similar to this was said by the Messenger of Allah ﷺ'). Hence, the need for this refrain to be appended with translations cannot be overemphasized. I have not inserted this caveat through the text fearing loss of continuity, but I request the reader to keep this in mind wherever and whenever he or she comes across a Hadith narration- in Arabic or any other language.

Also, and for the same reason, I have not translated terminologies like *Surah*, *ayat/ayaat* and *deen* as Chapters, verse(s) and religion, as is the usual (but erroneous) practice. Instead, I have let them remain, simply transliterating them. *Deen* is a comprehensive term used by the Qur'an to cover the entire system of life, including its political, legal and socio-religious dimensions. This volume, in particular, has been especially difficult to translate given the erudite discussions on jurisprudence and the Arabic legal terminologies it is laden with. I have had to retain the original terms at most places, offering a translation wherever required.

All said and done, whatever justice I have been able to do with the original text I owe to none but God ﷻ, and wherever I may have erred I blame my own weaknesses.

May Allah accept this work from the author and this translator.

May 2018

Dr. Parvez Mandviwala

Section 1:

Limits and Sources of Islamic Legislation

- Scope of Legislation in Islam and the status of *Ijtihad* therein
- Mr. Smith's letter and its Reply
- *Ijtihad* and its Requirements
- The status of wordings and spirit in *Ijtihad*
- Legislation, Consultation and Consensus
- The Proper Method of resolving disputes in the Islamic State
- The status of Sunnah as a source of Law

Scope of Legislation in Islam and the status of *Ijtihad* therein

This paper was presented by the author in an International Colloquium held at Lahore on the 3rd of January 1958.

In order to understand the scope of legislation in Islam and the status of *Ijtihad* therein, it is important for us to understand two concepts very clearly:

Divine Sovereignty:

The first thing that needs to be kept in mind is that Islam recognizes God as the sole sovereign. The concept of monotheism as defined by the Qur'an does not limit Almighty God to the status a religious deity; He is also- in political and legal parlance- the absolute Sovereign, the One who has complete authority over commanding and forbidding anything and He is also the interpreter of Law. The Qur'an presents this Legal Sovereignty of God with the same clarity and emphasis with which it has presented the idea of God being a religious deity. The Qur'an considers both these aspects essential and indivisible components of divinity; the denial of any of these components would necessarily translate into the denial of God's divinity. The Qur'an does not leave any window open to assume that perhaps Divine Law refers to the Law of Nature. On the contrary, its entire message revolves around calling upon man to accept and abide by the Divine Law, which He has sent through His messengers, which pervades all the avenues of his moral and collective life. It

defines Islam as obeying this Divine Law and surrendering one's independence before it. It outright rejects man's right to have a second opinion in a matter that has already been decided upon by God and His messenger.

وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ ضَلَالًا مُبِينًا

"It does not behove a believer, male or female, that when Allah and His Messenger have decided an affair they should exercise their choice in that matter."

[Surah alAhzab ayat 36]

The Prophethood of Muhammad ﷺ

The second thing that is as fundamental to Islam as monotheism is that Muhammad ﷺ is the final prophet of God. In fact, it is this very factor by which the creed of monotheism no longer remains just an idea, but takes the form of a practical system. And it is on this that the entire edifice of the Islamic system of life has been erected. It implies that the teachings that had been conveyed by all the previous prophets have been included in the teachings delivered by Muhammad ﷺ, with the additions of certain important clauses. Hence, this is the only authentic source of divine guidance and its interpretation; no guidance or interpretation would ever be revealed in addition to this. So man need not look further. It is this Muhammadian teaching that is the Supreme Law representing the Will of the Supreme Authority. We have received this Law from Muhammad ﷺ in two ways. The first is the Qur'an, which is a verbatim compilation of the injunctions and guidelines revealed by God Almighty. The second is the pristine example of Prophet Muhammad ﷺ and his practice (*Sunnah*) that serves as an interpretation and elaboration of the intended message of the Qur'an. Prophet Muhammad was not only the messenger of God, entrusted with the

mere task of conveying His Book. He was also appointed as a guide, judge and teacher. His task was to interpret Divine Law by means of his words and actions, explain the spirit of the Law, train the people in accordance with that spirit, organize these trained people to strive towards the reformation of society and then transform this reformed society into a just state and show to the world how a complete culture and civilization can be established on Islamic principles. This task, which the Prophet ﷺ accomplished in his tenure of 23 years, is the 'Sunnah', which along with the Qur'an, forms the Supreme Law of the Supreme Authority. This Supreme Law, in Islamic terminology, is called 'Shariah'.

Scope of Legislation:

At first sight, a person listening to these fundamental principles would come to assume that in such a situation, there is no scope for human legislation in an Islamic state at all. For, here the legislator is God ﷻ Himself and the Muslims are required to do no more than abide by the divine law that has been conveyed by the Messenger. But the fact remains that Islam does not oppose human legislation at all; it only confines it within the premises of the Supreme Divine Law. So what is the scope of human legislation under this Supreme Divine Law in a way that it abides by its pre-established framework?

***Ta'abeer* (The Interpretation of Injunctions):**

When it comes to the affairs concerning one's life, there is one set of affairs about which we find clear and explicit commands or specific rules in the Qur'an and the Sunnah. No jurist or judge or court of law has the authority to change these commands and rules. But this does not mean that there is absolutely no window left open for legislation in these matters. The scope of human legislation in these matters begins with ascertaining what exactly the

command is. Next, its underlying objectives and implications should be arrived at, and the conditions and situations in which this command is applicable should be investigated into. Thereupon, the ways in which it can be practically applied to actual ground issues and the detailed components of the compendious command should be determined. It should also be determined when and how far can we deviate from this command/rule in exceptional cases.

Qiyas (Analogical Deduction):

The second set of affairs is that about which we find no explicit command in the Shariah, but we do find injunctions concerning those matters that resemble these affairs. The scope of legislation in such cases would be to properly understand the rationale and basis of that particular command and to implement it in all those cases where that underlying factor is found to exist and to keep all those affairs outside the purview of that command which do not confirm to that underlying factor.

Istanbaat (Logical and methodical reasoning):

The third set deals with those affairs about which the Shariah has not given any specific command, but only broad guiding principles. This includes those things in which we are told what God approves of and would like to have promoted and what He disapproves of and need to be eliminated. The scope of legislation in such cases would be to understand those principles of Shariah and the objective of the Law Maker and to design such laws for these practical affairs that are based on those principles and fulfil those objectives.

The scope of Independent Legislation:

Apart from these three sets of affairs, there are an overwhelming number of those affairs about which the

Shariah maintains complete silence. Neither do we find any explicit injunction in their regard, nor does it contain any guideline on similar matters for us to deduce the appropriate law. This silence itself proves that God, the Supreme Law Giver, has Himself entitled human beings to decide upon such matters on the basis of their own opinion. Hence, independent legislation can be carried out in these cases. However, such legislation should be in line with the spirit of Islam and abide by its general principles. It should not contravene the overall nature of Islam and should fit snugly in the system of life that is espoused by Islam.

Ijtihad

All this process of legislation that provides momentum to the Islamic legal system and keeps it relevant to the needs of every age can only be possible by means of a distinct academic research and intellectual reasoning, which is referred to as *Ijtihad* in Islamic terminology. The literal meaning of this word is to 'exert one's utmost effort in achieving something'. When used as a terminology, it means 'utmost deliberation into ascertaining the Islamic command and stand regarding the concerned matter'. There are some people who misunderstand *Ijtihad* to mean an absolutely independent form of opinion. However, those who are well acquainted with the structure of Islamic law would never fall prey to the suggestion that there can ever be any room for independent opinion making in such a strong legal system. Here, it is the Qur'an and the Sunnah that are regarded as the Principal Law. Whatever legislation human beings are allowed to engage in should either be derived from that principal law or should be confined to the limits within which it allows man to act upon his opinion. If someone indulges in any deliberation independent of this principal law, it would not be regarded as an Islamic *Ijtihad* and it would have no place in the Islamic legal system.

The essential qualifications required for Ijtihad

Since the objective of Ijtihad is not to replace divine law with man-made law, but rather to understand it properly and make the Islamic legal system applicable and relevant to the current times under its guidance, it is imperative that our legislators/jurists possess the following credentials:

1. Faith in the Shariah (Divine Law), a firm belief in it being the ultimate truth, a sincere determination to follow it, having no desire to act independent of it and deriving the objectives, principles and values from divine law alone and not from any other source.
2. A good knowledge of the Arabic language, its rules and literary forms. This is because the Qur'an has been revealed in Arabic and all sources from which the Sunnah can be known are also in Arabic.
3. A deep knowledge of the Qur'an and the Sunnah, which not only informs him of the supplementary injunctions and the corresponding circumstances in which they are applicable, but also informs him of the overall nature of Shariah and its underlying objective and spirit. He should have knowledge of the comprehensive scheme presented by the Shariah for the overall reformation of human life. At the same time, he should also be aware of the status of each of the components of life in this comprehensive scheme, on what lines does Shariah wish to develop them and what is its intended purpose behind every such development. In other words, Ijtihad requires that knowledge of the Qur'an and Sunnah which would allow him to reach the core of Shariah.
4. An awareness of the work done by the scholars who have contributed to this field in the past. This is not only required for the purpose of training, but also for the continuity of legislative progress. The objective of Ijtihad is not - nor should it ever be - to discard the work of the previous generations and start afresh.

5. An acquaintance of the practical issues and situations prevalent in his age, for it is for these very issues that he is required to interpret and deliberate upon the commands, principles and rules of Shariah.
6. He should possess a good character as per Islamic moral standards. No one would have faith in the results of his deliberation if he is bereft of a good character; and the laws formulated by such a person would not find public acceptance and respect.

The purpose of enlisting these credentials is not to insist that every person working in this field should first furnish a proof that he possesses these qualities. Instead, the intention was to make it clear that if there can be any proper advancement in Islamic law through Ijtihad, it can only be possible when the syllabus of legal education and training is prepared by such knowledgeable experts. Any legislation that is done exclusive of these attributes would neither fit into the Islamic legal system, nor would the Muslim society be able to digest it properly.

The correct method of Ijtihad:

Just as the acceptability of Ijtihad and the resultant legislation is dependent upon the qualifications of the ones doing it, it is also dependent upon the manner in which it is carried out.

- i. Whether a *mujathid* (the one who engages in Ijtihad) is interpreting the commands, performing *qiyas* (analogical deduction) or *istanbaat* (logical and methodical reasoning), he should derive his arguments from none other than the Qur'an and the Sunnah. Even in those cases where he is engaging in independent legislation (that have been categorized above as the fourth set of affairs), he should furnish proof that the Qur'an and Sunnah are indeed silent on this topic and have no command or rule in this regard, not even to the extent of allowing for a parallel deduction.

- ii. The inference that is drawn from the Qur'an and the Sunnah should necessarily follow the methods that are recognized among the scholars.
- iii. In order to infer from the Qur'an, it is necessary to interpret the ayaat in a way that it concurs with the vocabulary, rules and familiar usage of the Arabic language, confirms to the Qur'anic context, does not contradict the other ayaat of the Qur'an dealing with the same topic and finds support in the verbal and practical interpretations of that ayat in the Sunnah, or in the very least the Sunnah should not go against his inference.
- iv. In order to infer from the Sunnah, along with the knowledge of the Arabic language and the context, it is also important that the narrations from which the issue is being derived should be sound and reliable as per the rules of the science of Hadith, the other authentic aHadith related to that topic should also be checked and no conclusion should be reached on the basis of any single narration that contradicts the Sunnah as confirmed from authentic sources.

An Ijtihad that is performed without abiding by these precautionary measures, on the mere basis of one's random interpretations, can never be accepted by the collective conscience of the Muslim community, nor can it ever truly become a part of the Islamic legal system, even if it is forcefully accorded legal status by the state. This enforced law would be relegated to the dustbin the moment the political power that had backed it loses authority.

How does an Ijtihad become a Law?

There are a number of ways by which an Ijtihad can be accorded legal status in the Islamic legal system. These are:

1. There develops a unanimous consensus among all the religious scholars of the Muslim community over the proposed law.

2. The Ijtihad of a person or a group gains mass popular appeal and people begin to follow it on their own volition. The example of the Hanafi, Shafai, Hanbali and Maliki jurisprudence can be cited in this regard which have been accepted by large populations of the Muslim world as law.
3. A Muslim government accords legal status to an Ijtihad. For example: the Ottoman and Mughal empires had accepted the Hanafi jurisprudence as their state law.
4. There exists a state legislative department, a constitutional body, which designs a law by means of Ijtihad.

Save these methods, all the other forms of Ijtihad are nothing but personal rulings (*fatawa*). As for the verdicts issued by judges, they are no doubt enforced as law in the context of the specific case that has been heard in their court, and they are later treated as precedents as well. But they are not laws per se. Even those decisions of the Rightly Guided Caliphs that they made in the capacity of judges could not be accorded the status of Islamic law. There is no concept of Judge-made-Law in the Islamic legal system at all.

Tarjumanul Qur'an
January 1958 CE

The Objections raised by a Hadith-denier and the reply given

[After this paper was presented at the aforementioned International Colloquium, a Hadith-denier raised the following objections. These objections and the reply given by the author to each of them have been reproduced below.]

I shall try to reply to the objections raised on my paper as briefly as possible.

The first objection that was raised related to the position accorded to the Sunnah along with the Qur'an. I shall reply to this objection in a sequential manner so that the matter becomes absolutely clear to you.

1. It is an undeniable historical fact that after being honoured with prophethood, the Prophet ﷺ did not restrict himself to conveying the Qur'an. Instead, he spearheaded a holistic movement that led to the formation of a Muslim society, the birth of a new culture and civilization and the establishment of a state. The question is that in what capacity did the Prophet ﷺ perform all these other tasks? Were they performed in the capacity of a Prophet, in which he used to represent the Will of God in the same way as the Qur'an does? Or were his prophetic duties limited to conveying the Qur'an, after which he remained an ordinary Muslim whose words and deeds did not hold any legal status or authority as such? If we accept the former proposition, we have no choice but to accept the Sunnah as a legal

authority at par with the Qur'an. However, if the latter is accepted to be true, there is no reason why it should be regarded as being legally binding.

2. As far as the Qur'an is concerned, it explicitly tells us that the Prophet ﷺ was not merely a postman (God forbid). Rather, he was appointed by God as a guide, judge and teacher as well, obeying and following whom was incumbent upon the Muslims, and whose life was presented as an example for all believers to emulate. Reason also refuses to accept that all that a Prophet was required to do was to read out the revealed scripture, after which he remained no more than an ordinary common man. As for the Muslims, they have- from the very beginning of Islam to this day, in all times and places- been unanimous in regarding the Prophet ﷺ as one who should be necessarily followed as an example and whose commands should be compulsorily obeyed. This is such an evident fact that even a non-Muslim scholar would not disagree to it. It is on this basis that the Islamic legal system regards the Sunnah as a source of law along with the Qur'an. I fail to understand how someone can challenge this legal status of the Sunnah until he comes out in the open and clearly states that the prophetic task of Muhammad ﷺ was nothing more than reading out the Qur'an, after which he ceased to be a prophet. Even if he does make such a claim, he would have to specify if it is he who is according this status to the Prophet on his own or if the Qur'an has also accorded him the same status. If the former happens to be true, it has got nothing to do with Islam. In case of the latter, he would have to substantiate his claim by citing evidence from the Qur'an.
3. After having accepted the Sunnah as a source of law, it should also be asked how we can acquaint ourselves of it. But this is not the first time in all these centuries that we have been faced with this issue of getting

acquainted with the Sunnah that was left behind by a prophethood dating back to a millennium and a half. We have two undeniable historical facts with us in this regard.

The society that was established from the very beginning of Islam, and which was based on the Qur'an and the Sunnah, continues to this day; it is very much alive and flourishing. It has not been interrupted for even a single day, and all its departments have been functional all these years. The astounding similarity that is seen among all the Muslims of the world with regards their shared belief and ideology, morals and values, worship and dealings, perspective and way of life- a culture that shows exceedingly more resemblance than differences, and which binds all the Muslims spread out all over the planet into a single Ummah- is evidence enough of the fact that this society has been established on a single Sunnah and that this has continued to exist uninterruptedly through all these centuries. It is not a lost entity that we are required to seek out in the dark.

The second historical fact, that is as evident as the first, is that every generation after the Prophet ﷺ has earnestly tried to gain knowledge about the Sunnah and understand which new innovative practice is finding its way into their lives. Since they accorded legal status to the Sunnah and based their judicial verdicts on the Sunnah, and since all their affairs from the domestic realm to the administrative corridors were decided by the Sunnah, they could not afford to be neglectful of it or disinterested in investigating into it. We have inherited the means and results of this investigation right from the time of the first Caliphate of Islam to the present day, generation after generation, and the studies of all these generations have remained preserved and safeguarded.

If a person comes to realize the importance of these facts and engages in a proper academic study of the means by which he can acquaint himself with the Sunnah, he would never confuse it with a strange thing about which he can have no clue whatsoever.

4. It is true that there have been many a difference in these investigations into the Sunnah and the results that have been derived from them. Such differences can also occur in the times to come. But such differences can and have occurred while deciding upon the meaning of a number of statements and injunctions of the Qur'an as well. If such differences do not become valid grounds for abandoning the Qur'an, then how can they be cited as valid grounds to abandon the Sunnah? We have always abided by the principle (and we have no other option but to do so) that anyone who claims something to be a command of the Qur'an or of the Sunnah, he is required to furnish proof of his claim. If his claim has substance, it would find acceptance with most or all the scholars of the Ummah. And if his claim is unfounded, it would not find any acceptance. It is on the basis of this principle that millions of Muslims all around the world adhere to a juristic school of thought and large portions of their populations have established their collective system in accordance with a specific interpretation of the Qur'anic injunctions and a specific compilation of the authentic Sunnah.

The second objection that was raised on my paper was that my statements were mutually contradictory. My statement that 'No one has the authority to alter the clear and explicit commands of the Qur'an and the Sunnah' is allegedly inconsistent with the statement that 'One can deviate from these commands in exceptional cases and situations, and such situations would be delineated by means of Ijtihad'. But I could not understand the inconsistency therein. Every law in the world allows for a deviation from the norm in exceptional, emergency and

constrained situations. Such examples abound in the Qur'an as well. It is from these examples that the respectable jurists have arrived upon the principles that need to be kept in mind while deciding when and how much deviation is permissible. For example: 'Need makes an impermissible thing permissible' and 'Hardship brings ease'.

The third objection was raised on all those people who had listed down the conditions required for Ijtihad in their respective papers. Since I am one of them, I stand obliged to reply to this objection as well. I would request you to go through the conditions I have enumerated in my paper and tell me which of those conditions you would like to strike out. Is it the sincere determination to follow the Shariah, having no desire to trespass its limits? Or do they wish to abrogate the condition that they should have knowledge of Arabic, which is the language of the Qur'an and the Sunnah? Or that they should have engaged in a deep study of the Qur'an sufficient enough to acquaint them with the system of the Shariah? Or that they should be aware of the work done by past scholars? Or that they should be cognizant of the issues prevalent in this world? Or that they should not be immoral or characterless? Please point out which of these conditions you deem unnecessary. To claim that there would not be more than a handful of people who would be able to fulfil these conditions in the entire Islamic world of forty to fifty crore Muslims is an extremely prejudiced view. Perhaps even our enemies have a better opinion about us. Nonetheless, if you wish to permit each and every person to engage in Ijtihad, please feel free to do so. But please tell me how would you convince the Muslim public to accept an Ijtihad that has been carried out by characterless, uneducated and insincere people having dubious intentions?

Tarjumanul Qur'an

January 1958 CE

Mr. Smith's letter and its Reply

[The International Colloquium that was held at Lahore in January 1958 was attended by a number of Muslim and non-Muslim intellectuals from around the world. During and even after the Colloquium, these guests kept meeting the Pakistani intelligentsia and tried to understand each other's point of view and methodologies. Many of these foreign intellectuals kept visiting the author at his office on a regular basis, Mr. Wilfred Cantwell Smith being among those who deserve a special mention in this regard. He is a renowned personality among the English-speaking population of our country (Pakistan) and his contributions are well known. He has been a professor of Islamic History at Aligarh College and has taught at Forman Christian College, Lahore as well. Currently he is the Director of the Institute of Islamic Studies at the prestigious McGill University, Montreal. The following letter, written by Mr. Smith originally in English, has been translated back into English from an Urdu translation of the same letter.]

Mr. Smith's letter

Greetings,

It was very generous of you to have granted me the honour of being present at your service last week. I extend my heartfelt gratitude for your kind gesture. I have benefitted a lot from this personal interaction. I was extremely delighted to meet you in person. I was thus able to closely study your ideological perspective and style of

logical reasoning and derivation. These benefits would probably have missed me if I would have only sufficed at reading your books.

Since during the course of our discussion you had told me that you would guide me towards understanding Islam and your elucidation related to it, I have been emboldened to ask you a few things. If it is not too inconvenient, would you please send me the Urdu and Arabic copies of the paper on Ijtihad that you had presented at the International Colloquium? I have gone through the English translation of that paper in quite some detail. I was overawed and impressed by the manner in which you have explained the meaning and interpretation of divine law and presented Islam as submission to that divine law. So important is this point that I have developed a natural urge to deeply study the Arabic terminologies that have been used to elaborate upon this point. The same holds true for all the other important parts of that paper. If you have extra copies of that paper's Urdu and Arabic translations, please send them to me so that I may study them.

There is a query that I have in this regard. In the English translation, you have defined Islam as 'obeying the divine law and surrendering one's independence before it'. I had hitherto understood Islam as submitting oneself before God. But you seem to equate both these things, seeing no incompatibility between the two. In the paper that I had read out at the Colloquium, I had presented these as two mutually exclusive ideas. Since the Urdu and Arabic translators of my paper could not understand my point of view properly, I would speak on the basis of my English paper. I hope this clarification would lay to rest the confusion that I had shared with you during our meeting and had stated that in my opinion the Jama'at-e-Islami only concentrates on certain external aspects of religion instead of focussing on man's relationship with God. The reply you had given me has equipped me with enough material to contemplate upon and has encouraged me to reflect upon it.

Nevertheless, the stand you have adopted in the aforementioned paper leads us to the same issue. Does the heart of a Muslim's faith not lie in his relation (Submission: Islam) to God, rather than to his relation with the Shariah?

This leads us to one more issue. What is the correct position of the relation of the Muslim community with other religious communities? Your statement has confounded me. You see, eating pork is quite an ordinary thing for a Christian; a non-issue. I am unable to fathom its import. As a Christian, I believe that I am absolutely free to have pork if I want to, and there is nothing preventing me from doing so. But I'm sure that if I have pork, you, being a Muslim, would be offended by it. This is because you consider the Shariah to be a universal divine revealed law. Is it not that God's injunctions are meant to be followed by each and every person? It is another matter that it is only the Muslims who are completely abiding by it. If I were to speak a lie, you would detest it and deem it unacceptable. Is it so that there is a universal moral code that applies to all human beings and some other rules and injunctions that apply only to Muslims?

I don't drink or smoke. This gives immense pleasure to my Muslim friends, for having followed these two codes that are enshrined in their religion, despite the fact that I have my personal reasons for refraining from doing so (and not because Islam would have me refrain from it). I have never touched a cigarette or a glass of wine all my life. I believe it is better for a man (and hence more pleasing to God) that he refrains from having alcohol. And this holds true for a Muslim as much as it holds true for a Christian or a Hindu or a Jew. But there is another aspect to it when it comes to a Muslim. An alcoholic Muslim not only spoils his health, he also develops a guilty conscience because of it. This is because he considers drinking alcohol as something that is forbidden to him.

What I would like to know is that would it not please you Muslims if I and other non-Muslims like me abide by

the Shariah? I acknowledge that just because we are not Muslims, it does not mean that we stand absolved of all the restrictions of the Shariah. You would probably reply that I, being a Christian, ought to follow the rules and injunctions laid down by the Christian faith. But what should be the approach of a Hindu or an atheist in this regard? Isn't an atheist who is honest and upright better (and hence more acceptable before God) than a believer who is dishonest?

I am sorry to have given you an unwarranted trouble. And I have perhaps taken more than my due from the magnanimity you have shown towards me. But I'm being so bold and audacious for the only reason that I have spent my entire life in understanding these issues, those issues in particular which- if solved- can be instrumental in bringing about a sense of peace and amity between the communities.

Yours sincerely,
Wilfred Cantwell Smith

The Author's Reply

Respected Mr. Smith,

I am deeply obliged by your kind correspondence. As per your request, I am sending you the Urdu and Arabic copies of the paper I had presented at the Colloquium; please find them enclosed herewith. The original paper has been written in Urdu, the English and Arabic versions are but translations. Since you understand Urdu, it would be better if you refer to the Urdu paper. I am also sending you the note that I had presented at the Colloquium as a reply to the objections raised on my paper.

The inter-relation between Islam and Shariah:

I understand that you have been disturbed by the definition of 'Islam' that I have stated in my paper. Islam no doubt means the obedience to God, but this obedience

would naturally necessitate obeying His laws. This is because 'obeying God' and 'not obeying His laws' are mutually incompatible ideas. If you were to reflect upon this matter in the sequence that I have adopted in my paper, the correct position would become clear to you. The sequence I am referring to is:

1. The Qur'an regards God not only as a Deity, but also as a Sovereign.
2. Both these aspects of divinity are essential and indivisible components of monotheism; the denial of any of these components would necessarily translate into the denial of God's divinity.
3. Going by this perspective, the Law of God that we are required to obey is not the Law of Nature, but the law that God reveals through His Messengers, the objective of which is to reform and streamline our ideology and our individual and collective approach in life.
4. The very crux of the Qur'anic teaching is that man should submit himself before the guidance and law that God has revealed through His Messengers and surrender his independence before it. This is how the Qur'an defines 'Islam'. In other words, if a person claims that he submits himself before God but refuses to submit before the guidelines and injunctions that God has sent through His Messengers and refrains from surrendering his independence before it, then the Qur'an would not call such a person 'Muslim'.

If you try to understand this matter this way, you would realize that the question you have asked, 'Does the heart of a Muslim's faith not lie in his relation (Submission: Islam) to God, rather than to his relation with the Shariah?' does not arise at all. This is because a Muslim's relation with God (submission) automatically manifests as his relation with the Law of God (Shariah). This is such a natural outcome that if Islam ceases to have a relation with

the Law of God, then Islam ceases to have a relation with God Himself.

The need of preserving the Form of Islam to safeguard the Spirit of Islam:

Whatever I had said about the pork-eating habits of Christians (during our meeting) was said in an altogether different context. What I was trying to explain to you was the importance Muslims attach to the form of Islam along with the spirit of Islam, and why ignoring and neglecting this form naturally results in a Muslim getting alienated from the spirit of Islam as well. I had cited many an example to make this point clear to you. I had told you that if a Muslim were to stop offering his prayers (*salaat/namaz*), this would necessarily result in him abandoning all those obligations that fall upon him in the form of the rights of God and fellow human beings. Since the prayer is the primary obligation that is binding upon him in his capacity as a Muslim, a person who abandons it while realizing and acknowledging that it is an obligation upon him cannot be expected to fulfil any other right or obligation. On the same lines, if a Muslim indulges in those things that are strictly forbidden in Islam and categorized as grave sins while being totally aware and cognizant of them being forbidden and sinful, then you cannot expect such a person to keep away from transgressing upon a moral limit or engaging in something unethical. I had told you that you people tend to see those Muslims who abandon their prayers and eat pork from your own perspective and get elated at the notion that these Muslims have grown closer to your faith. But you fail to understand that by transgressing upon those limits and dishonouring those sanctities, he has in fact fallen miserably from the ethical standards that you hold so dear. In your case, you do not consider prayers to be an obligation at all, and eating pork is a common thing for you. This allows you to abide by the ethical standards and honour your treasured values despite not offering prayers

and eating pork. But the Muslim who has indulged in these acts of commission and omission has grown closer to you by transgressing upon so many vital limits and so many precious values that there is hardly anything in this world left for him to honour. Such a person would not think twice before sacrificing the most sacrosanct values at the altar of his personal desires and gains. I had therefore requested you to stop encouraging those people who defy the injunctions of Islam. This is an expression of a serious moral depravity in the Muslim society; and the moral decline of any human society is not only the loss of that society alone, but the loss of all humanity.

What restrictions can an Islamic Government impose upon its non-Muslim citizens?

You are right in saying that since we consider every sin an abominable act, we ought to detest it being practiced by any and every person. This is exactly what our position is. We consider all the divine injunctions as being valid for all human beings; we feel hurt and saddened if any person acts against them. Even if that particular sin does not hold much importance in his eyes, it certainly does hold a lot of importance in ours. However, if a non-Muslim person resides in an Islamic state, we would try to compel him to abide by certain Islamic laws and allow him his freedom in certain other matters. For example, we regard polytheism as the worst of sins, but we would not forbid him from indulging in polytheism if that is what his creed requires him to do. Similarly, having pork is absolutely forbidden upon Muslims, but we would not prevent him from having pork if he happens to consider it permissible for himself. But we would certainly prevent him from committing theft, perjury, fraud and embezzlement, because these are such acts that are unanimously considered to be crimes all over the world and they lead to corruption in the land.

I also concur with your observation that the more a person relates to us in terms of ethical values and desirable

qualities, the more should we be pleased with him. His choice of adhering to a wrong creed notwithstanding, an honest and upright person is any day better than a deceitful and immoral one. We are all the more hopeful that such a person would one day realize the flaws of his wrong creed and incline towards accepting the correct ideology.

Humbly yours,

Abul Aal Maududi

Jamadi alAwwal 1377/ February 1958 CE

***Ijtihad* and its Requirements**

A person has commented on the issue of *Ijtihad* that is currently being discussed all over the country. He asks:

“Is it not the need of the hour that the doors to *Ijtihad* that have been kept shut all these centuries be thrown open? Would the principles of *Ijtihad* that had been charted out a millennium back be applied stringently today to the issues of the twentieth century as well? How would the Government deal with this roadblock where the acolytes of every sub-sect are unyieldingly against any suggestion of modifying the rulings derived from the *Ijtihad* of *their* religious scholars and are adamant upon the view that the solutions to today's issues should be arrived at on the basis of those rulings alone? If the religious scholars of every sect are collectively nominated for '*ijma*' (consensus) by popular vote, would the *Ijtihad* that would be arrived at by this method be acceptable to all Muslims? Can the Government be forced to act upon such an *Ijtihad*? To what extent can dissent, disobedience and criticism be entertained? Can the Islamic state implement the absolutely appropriate *Ijtihad* and rulings obtained from Caliph Ali (God be pleased with him), Imam Jafar Sadiq (God have mercy upon him) and Shia religious scholars?”

Your question is composed of a number of fundamental questions. I would reply to each of these questions one by one.

For whom is the door to *Ijtihad* open?

A person who clearly understands the need and importance of *Ijtihad* in running an Islamic system amidst

the ever-changing times and situations would never object to opening up the doors to Ijtihad. But we need to be cautious in this regard. Ijtihad is not exactly the forte of those people who require a translation to understand the Qur'an, who are not only ignorant of the Hadith corpus but who also undermine its status, who have no inkling of the work done by Islamic jurists in the past thirteen centuries with regards Islamic law and discard it as irrelevant and those who have a tendency to interpret the Qur'an on the basis of Western thought and ideology. If such people perform Ijtihad, they would corrupt Islam; and Muslims- so long as they have even an iota of Islamic spirit left in them- would never accept their Ijtihad with full conviction. Whatever law that is legislated on the basis of such an Ijtihad can only be enforced upon the people by means of coercion and it would be abandoned once the coercion ceases to exist. The collective conscience of the people would vomit it out just as the digestive system of a person vomits out a swallowed fly. The only Ijtihad that Muslims can ever accept is the one that is performed by those whose knowledge, piety and discretion they hold in high regard, and about whom they are sure that they would not contaminate Islam with un-Islamic ideologies and perspectives.

1. The Principles of Ijtihad and their Importance

The fact that the principles of Ijtihad were charted out a millennium back is not reason enough to discard them. Please put them under the academic scanner and see what those principles actually were and whether there can be better principles for the twentieth century.

The first principle was that the person should properly understand the lexicon, grammar, idioms and literary nuances of the language in which the Qur'an has been revealed. Is this an incorrect principle? Can the interpretation of English law books be entrusted to a person who does not have a thorough knowledge of English? A

single misplaced comma can radically change the meaning of a clause in such books. It has also been seen that Parliament needs to pass an act just to reposition a comma. In sharp contrast, we have people here who want the Qur'an to be interpreted by those who stand in need of an English translation to understand the Qur'an!

The second principle is that the person should have engaged in a deep and extensive study of the Qur'an and the times and conditions in which the Qur'an was revealed. Is there any mistake in this principle? Can the interpretation of the contemporary law be entrusted to a person who has only passed a cursory glance over a book of law or has merely gone through its translation?

The third principle is that the person should be well-aware of the practical way in which the Islamic Law had been implemented during the era of the Prophet ﷺ and the Rightly Guided Caliphs (God be pleased with them). It is but obvious that the Qur'an has not reached us out of nowhere. It had been conveyed by a Messenger of God. That Messenger had groomed people on the basis of its teachings, erected a society and established a state. He had instructed thousands of people and had trained them to act according to the Qur'an. How can all this be ignored? How can turning a blind eye towards this record and extracting injunctions merely from the wordings of the Qur'an be justified?

The fourth principle is that the person should be acquainted of the work that has been carried out on Islamic law in the past. He should know the developments that have gone into this Law that we have with us today during all these years- how it was developed and what was the work carried out in each of these past thirteen centuries. He should know the manner in which the injunctions of the Qur'an and the Sunnah have been applied all across these centuries to their respective times and situations and the detailed laws that have been formulated in this regard. How

can we be expected to maintain the continuity of the development of Islamic law without having this prerequisite knowledge of this history and this work? If our generation happens to decide that it would abandon the work done by past generations and start interpreting the Law afresh, then let me tell you that such a foolish decision can be taken by our successive generations as well. It is not the sign of a wise community that it discards the research done by its predecessors. On the contrary, it picks up their research and develops it to a stage that they had not been able to reach.

The fifth principle is that the person should have a sincere faith in Islamic values, ideology and the authenticity and genuineness of the divine and prophetic injunctions. He should not look beyond Islam for guidelines; he should seek guidance within Islam itself. This is such a vital caveat that every law of this world would stipulate it as a compulsory condition for a person deliberating into it.

These are the only five principles of Ijtihad. If a person comes up with some more principles for the twentieth century and backs them up with proper argument and plea, we would all be indebted to him.

2. The solution to differences in juristic opinion in an Islamic state

As far as the sectarian differences found among Muslims are concerned, the religious scholars of Pakistan have already agreed that the citizens are free to practice the rulings of their respective school of thought within the premises of 'personal law', which means that the rulings that are recognized by their school of thought would be implemented upon them. As for the national laws, they would be in accordance with the system accepted by the majority. Does your grievance still hold any water? If our representatives meticulously follow this principle in the

legislative houses, our sectarian differences would see a decline and our Law can be developed in a fruitful manner.

3. The Shia jurisprudence cannot be accepted as Pakistan's National Law

The jurisprudence of Imam Jafar Sadiq and the Shia scholars can only be implemented in a country with a Shia majority. Accordingly, it has been implemented in Iran. In Pakistan, however, it can only be accorded the status of Shia people's personal law. How can it be implemented on the country's Sunni majority?

Tarjumanul Qur'an
December 1941

The status of wordings and spirit in *Ijtihad*

Another person writes:

“Would the ‘Ijtihad’ that would be carried out be based only on the wordings of the Qur’an and the Hadith and the rulings and laws derived from the Rightly Guided Caliphs’ Ijtihad that were implemented in the past or would the actual spirit of the ayaat and the Hadith be also taken into consideration to decide when and in what case and situation the particular ruling and law should be implemented? Even in contemporary law, the Preamble holds more importance than the wordings of the section concerned, on the basis of which even the Constitution and the Sections of Law can be rendered null and void. Let us suppose that for instance the Muslims observe a fast from sunrise to sunset. But what would be the schedule for fasts and daily prayers that would be followed by Muslims residing at the poles where days and nights extend for months together? And let us suppose that there is a land where there are no cows, bulls, camels, goats or sheep available for sacrifice, the only animals available are pigs, rabbits, fish, rhinos, elephants and dogs or even they are absent. How would sacrifice be offered in such areas? Abiding by the underlying spirit of sacrifice and the actual drive behind sacrifice, if the money worth the sacrificial animal is deposited in the government treasury or spent for the welfare of the community, would Islamic Law allow for it?”

Reply

Wordings and spirit- both need to be taken into consideration during Ijtihad. But the issue of 'spirit' is a complex one. If this spirit is derived from the overall teachings of the Qur'an, the practice of the Prophet ﷺ and the Rightly Guided Caliphs and the overall understanding of the Islamic jurists, then this spirit should no doubt be taken into consideration and it cannot be ignored. However, if the wordings are taken from the Qur'an and the Sunnah and the spirit is borrowed from somewhere else, then this would not at all be acceptable. Taking such a spirit into consideration would only mean that we are revolting against God and His Messenger, ostensibly in their own name.

On the issue of the schedule for prayers and fasts at the poles, we would have to see whether the actual underlying objective- in light of the Qur'an and the Hadith- is God's worship or the performance of these two acts of worship at the times stipulated in the Qur'an and the Sunnah. It is universally accepted that the actual objective of the injunction holds more importance. If there is some supplementary clause in the injunction that precludes the fulfilment of the actual objective, it is that supplementary clause which would be modified and not the objective itself. Now it is but obvious that the actual objective of prayers and fasts in light of the Qur'an and the Sunnah is the worship of God, and the schedule that has been stipulated for these acts of worship has been laid down keeping in mind the convenience of the vast majority of mankind. An overwhelming population of human beings resides in those areas where day and night keep altering regularly in a span of 24 hours. Since all these people cannot carry a watch all the time, for the sake of convenience the schedules of these acts of worship have been determined on the basis of those signs that are evident on the horizon and the sky. This allows every lay man to

easily recognize the schedule for his prayers and fasts. The poles are scarcely populated by human beings. In order to follow the injunctions of prayers and fasts, these people would have to carry out necessary modifications in the prescribed schedule to suit their conditions. This is because it is impossible for them to worship God as required if they are to abide by the prescribed schedule that has been stipulated for these acts of worship. It goes without saying that the command to worship cannot be dismissed in favour of the stipulated timetable.

There are only two principles that need to be followed while sacrificing an animal.

1. The animal should not belong to the list of those animals that Islam forbids.
2. The animal should be used as 'cattle' in that region.

These two principles allow men residing in all regions of the world to offer sacrifice.

Only animals would be sacrificed. Charity cannot be offered as its substitute. I have written extensively on this topic in the second volume of this book.

Tarjumanul Qur'an
December 1961 CE

Legislation, Consultation and Consensus

A number of views are being expressed about Islamic legislation in the backdrop of the demand for implementation of Islamic Law in Pakistan. A friend has written down his apprehensions to us in the following words:

“Extreme views are being expressed with regards the true nature and sphere of Islamic legislation. One group says that there is no scope for legislation in Islam whatsoever. God and His Messenger have already completed the Law; all that the Muslims are required to do is to follow it and implement it. On the other side of the ring we have those people who consider the scope of legislation to be so broad that they have authorized the Muslim rulers to amend and abrogate even those details of worship that we have received from the Prophet ﷺ. For instance, they have been allowed to add and subtract from the practical forms of prayers and fasts as well.

Kindly expound upon the sphere of legislation in Islam and what would be its various forms. Also, please make clear to us the legal status of the individual and consultative decisions of the Rightly Guided Caliphs and the opinions of the respectable Imams of jurisprudence. It would be very kind of you if you would shed some light on the actual implications of ‘shura’ (consultation) and ‘ijma’ (consensus) as well.”

Reply

The fundamental principle of Legislation

There is no scope for any legislation as far as laws related to Islamic worship are concerned. However, beyond this sphere, when it comes to dealings, there is a scope for legislation in those matters on which the Qur'an and Sunnah have maintained silence. The principle of legislation in Islam is 'When it comes to worship, do only what has been told. Do not introduce any new method in worship. As for dealings, abide by those commands that have been issued and refrain from those things that have been forbidden. In those cases where God and His Messenger have maintained silence, you are free to act as per your discretion. Imam Shaatbi has elaborated upon this principle in his book, *alAetisaam* as follows:

"The ruling on worship is not the same as the ruling on dealings. In the context of dealings, the rule is that permission has been granted to act upon one's discretion in those matters on which silence has been maintained. In contrast, no such elicitation that cannot be traced back to the revealed law is allowed in matters related to worship. Contrary to dealings, worship is directly related to explicit commands and explicit consent. This is because when it comes to dealings, in general, our intellect can arrive at the correct way. But this is not the case with worship, for we cannot use our intellect to determine the means to gain proximity with God."

[Volume 2, page 115]

The four departments of Legislation

There are four departments of legislation in matters concerning 'dealings'

- a. *Ta'abeer*: To determine the meaning and objective of those commands which have been explicitly given by God and His Messenger.
- b. *Qiyas*: In those matters where God and His Messenger have not given any explicit command- but we do find injunctions concerning those matters that resemble these affairs- determining the rationale and basis of the command and to implement it in all those cases where that underlying factor is found to exist is termed as *qiyas*.
- c. *Istanbaat* and *Ijtihad*: To apply the broad principles of Islamic Law on individual issues and matters. To contemplate over the hints, connotations and guidelines contained within the sources of Islamic law and understand how God and His Messenger would have us lead our lives.
- d. To legislate, in those matters where we find no guideline, in accordance with the overall objective and purpose of Islam, in a way that they fulfil the requirement at hand while abiding by the spirit of the holistic system of Islam and its temperament. The jurists have referred to this by using various terminologies like '*masaleh mursilah*' and '*istahsaan*'. *Masaleh mursilah* means 'those general matters that have been left to our discretion'. *Istihsaan* means that although in a particular matter a ruling is apparently obtained by *qiyas*, there is some higher expediency that demands another ruling. In this case, the second ruling would be implemented instead of the first one.

A discussion on Masaleh Mursilah and Istahsaan

There is no need to elaborate upon *Ta'abeer*, *Qiyas* and *Istanbaat* any further (readers might also refer to a brief discussion on these terms in the first chapter... Translator). We would, however, shed some more light on *Masaleh mursilah* and *Istahsaan*.

Imam Shaatbi has dedicated an entire chapter to this topic in his book, *alAetisaam*. The explanation he has offered is the best I have come across so far in any book on jurisprudence. He has offered detailed arguments to prove that *masaleh mursilah*, unlike what some people assume, is not an absolutely free rein to legislation. Instead, there are three necessary prerequisites to it:

1. The law that is made in this manner should be in alignment with the objective of Shariah and not be repugnant to it.
2. It should be comprehensible to the general public when presented before them.
3. It should fulfil some actual need or ward off some actual threat.

[Volume 2, pages 110-114]

While discussing *Istahsaan*, he writes that if on the basis of an argument the judgment of *qiyas* apparently suggests that a certain command should be issued in a particular case, but the jurist feels that it would be imprudent to issue that command or that it would inadvertently lead to a problem or difficulty that Islam would like to ward off, or it is impractical in nature, then abandoning that command in favour of a more appropriate one would be termed as *Istahsaan*. Nevertheless, the condition for *Istahsaan* is that there should be a strong reason to reject a command that is derived from *qiyas* and issue a command that goes against it instead. Such a reason needs to be justified on the basis of reasonable and appropriate arguments.

[ibid, pages 118-119]

The difference between court verdicts and National Law:

The individual opinion and research of a Mujtahid Imam or jurist with regards these four departments can very well be an expert opinion and research, and the more knowledgeable the personality of the jurist the more would

be the importance attached to his opinion and research; but it would not be counted as a 'law'. For a law to be passed, it is necessary to have a consultative body of the Islamic nation's *ahle ha'l wa aqd* (disposing authority) which would adopt- by means of consensus or majority vote- a *Ta'abeer*, a *Qiyas*, an *Istanbaat* and *Ijtihad* or an *Istahsaan* or *Masaleh mursilah* and give it the status of a law. This was the form of legislation practiced during the era of the Rightly Guided Caliphs. Since I have already elaborated upon this topic in my pamphlet, '*Islami dastoor ki tadween*'¹, there is no need to repeat it here. I would present only a few examples here to show how legislation used to be carried out during that era whenever there arose a community or national issue, and what the difference between law and court verdicts was.

A few Examples:

1. All that the Qur'an says about drinking alcohol is that it has been forbidden. It has not mentioned any punishment for it. No specific penalty had been stipulated during the era of the Prophet ﷺ; he would give the convicts punishments as per his wise discretion. Caliphs Abu Bakr and Umar (God be pleased with them) used to give a penalty of 40 lashes, but they never made it into a law. When complaints of alcoholism saw a surge during the reign of Caliph Usman (God be pleased with him), he presented the issue before the consultative assembly. Ali (God be pleased with him), after a short speech, recommended a punishment of 80 lashes. The consultative assembly accepted this recommendation by 'consensus' and this punishment came to be regarded as a 'law' for posterity. [alAetisaam Vol 2 page 101]

¹ This pamphlet has been published by Islamic Publications Limited, Lahore. The relevant pages of this pamphlet are: 26-28, 35-37, 40-51 and 54-57.

2. Another law that was made during the era of the Rightly Guided Caliphs was that if an artisan is provided with some raw material to finish (e.g. if he is given a fabric to stitch or some gold to make ornaments) and that raw material gets spoilt or lost, he would have to compensate for it. This decision was also based upon a recommendation of Hazrat Ali and ratified by the consultative assembly. Hazrat Ali reasoned that although the artisan cannot be apparently blamed for the loss if it is not his negligence that led to it, it is quite possible that artisans would become callous and negligent in handling the raw material entrusted to them if they are not held accountable. Hence, expediency demands that they should be regarded as trustees of the raw material provided to them. [ibid page 102]
3. Caliph Umar (God be pleased with him) had issued a verdict that if a number of people are involved in the murder of a person, *qisas* would be imposed upon all these people. Imam Malik and Imam Shafi'i have accepted this opinion and ruled in its favour. However, it was not given the status of a 'law' because it was merely a court verdict; neither had it been ratified in the consultative assembly by means of consensus nor by a majority vote. [ibid page 107]
4. If the wife of a missing person marries another man by court's leave and if her missing (previous) husband happens to return, would she be returned to her first husband or would she continue as the second person's wife? The Rightly Guided Caliphs have issued various verdicts in this regard, but none of these have been accorded the status of 'law'. This is because this issue was not passed by the consultative assembly- either by consensus or by majority vote. [ibid page 126]

The above discussion also tells us that court verdicts do not enjoy the same status in Islam as they enjoy in British Law. Under British Law, the precedents set by the

judges assume the status of law. In Islam, however, although the verdict of the judge- that he has pronounced in a certain court case on the basis of an interpretation of the Qur'an and Sunnah, or on the basis of his *qiyas* or *Ijtihad*- would certainly be acted upon, it would not be accorded the status of a permanent law. Even if a judge has issued a certain verdict in a certain case, he is not at all obliged to adhere to this judgment in all later cases as well. He is free to pronounce a different verdict in similar cases that he hears later in his career if he is convinced that he had committed an error in judgment in his previous verdict.

When this system of having a consultative assembly got disrupted after the era of the Rightly Guided Caliphs, the various systems of jurisprudence that the respectable jurists proposed gained the status of provisional law for no other reason that a large majority of citizens residing in a particular area overwhelmingly accepted the *fiqh* (jurisprudence) proposed by a particular Imam/jurist. For instance, the *fiqh* of Imam Abu Haneefah came to be accepted in Iraq, that of Imam Malik in Spain and that of Imam Shafi'i in Egypt. However, none of these forms of *fiqh* came to be truly recognized as Islamic law on the basis of public approval. Wherever any of these forms of *fiqh* came to be accepted as state law, it was because the ruling regime accepted it as the law of the land.

Ijma (Consensus):

What exactly is Ijma? Religious scholars have come up with various definitions. Imam Shafi'i defines Ijma as 'All scholars being unanimous upon a particular matter, with not even a single voice of dissent'. Ibn Jareer Tabri and Abu Bakr Razi regard the majority opinion as Ijma too. When Imam Ahmad says about an issue that 'we do not find any dissenting opinion against it', it is understood to mean that in Imam Ahmad's opinion there is an Ijma on that particular issue.

It is a universally accepted fact that *Ijma* is a decisive argument. This means that once there is a consensus of the Ummah on a particular *Ta'abeer* or *Qiyas* or *Ijtihad* or expedient law, it becomes incumbent upon everyone to follow it. Whatever difference of opinion that exists, relates to the proof and evidence of the *Ijma* having taken place; and not the decisive status of *Ijma* per se. As far as the era of the Rightly Guided Caliphs is concerned, the Islamic organizational structure was firmly established at that time and it was based on *shura* (consultation). Hence, we have reliable data and proofs of the decisions that were passed during that time by a consensus or a majority vote in the consultative assembly. However, when this organizational structure collapsed in later times and the system of consultation was done away with, there remained no means by which it could be known which matters were actually ratified by consensus and which weren't. Hence, while the *Ijma* of the era of the Rightly Guided Caliphs is indeed considered undisputable, when it comes to later times, investigators outright reject the statement of any person who claims that there is an *Ijma* on an issue. It is for this reason that we stand in need of the establishment of an Islamic system to know which issue enjoys a consensus and which issue does not.

It is usually claimed that Imam Shafi'i and Imam Ahmad ibn Hanbal and certain other Imams did not give any importance to *Ijma*. This is a misunderstanding that owes its existence to a lack of knowledge of the aforementioned facts. What is actually true is that while discussing a matter if a person would claim that his opinion is backed by *Ijma*, they would reject his claim because there could be no proof to substantiate his claim. Imam Shafi'i has discussed this issue at length in his book, '*Jama'a alIlm*'. He has explained that since the Islamic world has now spread over a vast territory, and men of knowledge have settled far and wide, and the organizational structure of the state has got disrupted, it is

very difficult to know the views of all religious scholars on any component issue. Hence it is no longer valid to claim that a particular component issue has been ratified by Ijma. However, as far as the Islamic principles, its primary pillars and its major issues are concerned, it can most definitely be claimed that they enjoy a universal consensus. This includes issues like: the number of daily prayers is five, so-and-so are the limits of fasting etc etc.

Imam Ibn Taymiyyah explains the same concept in these words:

"A unanimous consensus of all the Muslim religious scholars is termed as Ijma. Once it is proved that there is an Ijma of the entire Ummah on a particular command, no person has any right to disobey it. This is because it is impossible for the entire Ummah to be united upon ignorance. But there are many issues about which certain people assume that there is a consensus over it, but it is not so. At times, the contrary opinion is more popular."

[Fatawa Ibn Taymiyyah Vol I, page 406]

The above discussion makes it amply clear that even if today there happens to be a consensus of the members of the disposing authority of an Islamic state or there is a majority vote of that assembly on any issue on the basis of a *Ta'abeer*, *Qiyas*, *Istanbaat* or expediency, it would be regarded as a decisive argument and would be accorded the status of law. If such a decision is taken by the disposing authority of the entire Islamic world, it would become the law of the entire Islamic world, and if it has been passed by the disposing authority of a particular Islamic country, it should nevertheless be the law of at least *that* country.

Tarjumanul Qur'an

Sha'aban 1374 AH/ May 1955 CE

The Proper Method of resolving disputes in the Islamic State

A reader of Tarjumanul Qur'an writes:

"The Qur'an says:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ
الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا ﴿٥٩﴾

"O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best way and best in terms of result."

[Surah anNisa ayat 59]

While explaining this ayat, you have written in (your exegesis) Tafheemul Qur'an that "The explicit and absolute principle that has been enshrined in this ayat is that the command of God and the practice of His Messenger holds the status of fundamental law and final authority in an Islamic system. The Qur'an and the Sunnah would be referred to solve all contentious issues arising among Muslims and those between the government and the citizens. Everyone would humbly submit before the verdict so obtained. Thus, accepting the Qur'an and the Sunnah as the ultimate authority, reference and final word in all issues of our life is a necessary attribute of the Islamic system, making it stand out from the lifestyle followed by disbelievers" [Tafheemul Qur'an: Vol 1 Surah anNisa].

Your explanation makes it amply clear that the final and decisive factor in all contentious issues are the

injunctions laid down by God and His Messenger. What confounds me is that while it was very much possible during the life of the Prophet ﷺ to approach him the moment there was a dispute, now that the Prophet ﷺ is not physically present among us and all we have are his teachings, which person or institution would have the final authority in deciding upon the right course of action as recommended by Shariah if we are faced with the need to interpret an Islamic injunction in an Islamic state? I hope you would oblige us by guiding us in this regard.”

Reply

The Three Guiding Principles of the Qur'an in Resolving Disputes:

The Qur'an, the Sunnah, the practice of the Companions, common sense and the accepted norms prevalent in the world all come together to help us out in solving the confusion that has been expressed in this query. Let us look into the Qur'an first. It offers us three guiding principles.

1st Guideline: Refer to the *Ahle Zikr* (People of the message)

In the 43rd ayat of Surah anNahl and the 7th ayat of Surah alAnbiya, it has been said, “So ask the *Ahle Zikr* (people of the message) if you do not know”. This term, ‘*Ahle Zikr*’ is very pertinent here. The word *Zikr* has been used specifically in the Qur'an to refer to that lesson or message that has been delivered by God and His Messenger to a community. *Ahle Zikr* refers only to those people who have been given this message. This word cannot be taken to mean ‘knowledge’ in the generic sense; it necessarily refers to the knowledge of the Book and the Sunnah. These ayaat thus tell us that the people worth being referred to are those who have knowledge of the divine Book and who are aware of the path which God's Messenger has taught them to follow.

2nd Guideline: Refer to the *Oolil Amr* (Those in authority)

وَإِذَا جَاءَهُمْ أَمْرٌ مِنَ الْأَمْنِ أَوِ الْخَوْفِ أَذَاعُوا بِهِ وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَى أُولِي الْأَمْرِ مِنْهُمْ لَعَلِمَهُ الَّذِينَ يَسْتَنْبِطُونَهُ مِنْهُمْ وَلَوْ لَا فَضْلُ اللَّهِ عَلَيْكُمْ وَرَحْمَتُهُ لَاتَّبَعْتُمُ الشَّيْطَانَ إِلَّا قَلِيلًا ﴿٥٧﴾ (النساء)

"And when there comes to them information about public security or fear, they spread it around. But if they had only referred it back to the Messenger and to those of authority among them, then the ones who are competent to investigate it would have known about it."

[Surah anNisa' ayat 83]

This tells us that when it comes to the crucial matters concerning society- whether in times of peace or war, and whether it is about some danger or not- such matters should only be referred to those people who hold a post of authority among the Muslims- those who are in-charge of running the community affairs of society and who are competent at *istanbaat*, i.e. those who can investigate the truth behind the matter at hand and who can derive the appropriate solutions from the Qur'an and the Sunnah. This ayat regards the people in authority, and not the *Ahle Zikr*, as the ones who should be referred to while dealing with community affairs and social matters. But they should nevertheless be from the *Ahle Zikr*, for it is they alone who are competent enough at arriving at correct conclusions in the concerned case in light of the Qur'an and the Sunnah.

3rd Guideline: Formation of a *Shoora* (Consultative Assembly)

The third guideline is,

وَأَمْرُهُمْ شُورَى بَيْنَهُمْ (النورى: ٣٨)

"their affair is determined by mutual consultation."

[Surah ashShura ayat 38]

This ayat tells us the manner in which the collective affairs of the Muslims should be determined.

When we club these three guiding principles together, we come to know that the practical way of 'referring our disputes to God and the Messenger' is that whenever people come across a general issue in their lives, they should refer it to the *Ahle Zikr*, who would tell them what instructions God and His Messenger have given us in that regard. As for those matters that concern society and state, they should be referred to those who hold authority, who should consult among themselves and seek the most appropriate solution to the issue at hand from the Book of God and the Sunnah of His Messenger.

Adherence to the above Principles in the Prophetic era

Now let us see how these principles were implemented during the era of the blessed Prophet ﷺ and the Rightly Guided Caliphs. When the Prophet was in our midst, he himself used to convey the verdict of 'God and the Messenger' in those disputes that were brought directly to him. Now it is but obvious that all the issues that were faced by the Muslims all over the Islamic state were not brought to the Prophet in person, nor was his judgment sought in each case. Instead, he had appointed people in various provinces of the state who used to instruct people in matters of *deen*, and the common people used to consult them in their day to day affairs to understand the relevant command contained in the Book of God and the teachings of the Prophet. Apart from these, there were governors, administrators and judges appointed in each province who used to independently decide upon most of the matters related to their respective domain. The manner in which they were supposed to abide by the clause, 'refer it to Allah and the Messenger' is reflected in the renowned Hadith related to Ma'az bin Jabal (God be pleased with him).

ان رسول الله صلى الله عليه وسلم بعث معاذا الى اليمن فقال كيف تقضى، فقال اقضى بما في كتاب الله، قال فان لم يكن في كتاب

الله، فقال فبسنة رسول الله، قال فان لم يكن في سنة رسول الله، فقال اجتهد رأيي، قال الحمد لله الذي وفق رسول الله لما يرضى-

(ترمذى، ابواب الاحكام، ابو داود، كتاب الاقضية)

When the Prophet appointed Ma'az bin Jabal the governor of Yemen, he asked him, "How would you judge?" He replied, "In accordance with the guidance enshrined in the Book of God". The Prophet asked him, "What if you do not find it in the Book of God?" He said, "I would then refer to the Sunnah of the Messenger". The Prophet further asked him, "And what if you don't find it in the Sunnah of the Messenger?" He replied, "I would then use my own sincere discretion". At this, the Prophet exclaimed, "To God is due all praise who enabled the ambassador of the Messenger of God to adopt the way that pleases the Messenger of God." [Tirmizi, Abu Dawood]

The Prophet had also founded the system of Consultative Assembly during his blessed tenure. He used to consult the opinion makers of society in all those matters in which he did not receive any express guidance from God. A very vivid example is that of the consultation the Prophet had with his companions regarding the manner in which people should be called to the masjid for prayers. Upon consultation, the Prophet selected the *azan* for this purpose.

Adherence to these Principles during the reign of the Rightly Guided Caliphs

Almost the same method continued during the reign of the Rightly Guided Caliphs. The only difference was that the Prophet ﷺ was physically present earlier and it was possible to personally refer a matter to him and seek his final judgment. After him, the point of reference shifted to his Sunnah which was preserved with the people in the form of narrations. There existed three different institutions

in this era that fulfilled the requirement of 'refer it to Allah and the Messenger' in their own respective capacities.

- a. The ordinary scholars who had knowledge of the Qur'an and were in possession of some information related to the verdicts issued by the Prophet or his methodology or his *taqreer*¹. Not only did the ordinary folk refer to them to solve their personal problems, even the Caliphs used to turn to them to ascertain whether the Prophet has issued any guideline about the cases that were brought to them or not. There have been many instances in which the Caliphs, owing to their lack of knowledge in a particular case, had issued a verdict based upon their own opinion. Later, they changed their verdicts when it came to be known that the Prophetic guidance in that case was something else. The scholars did not just serve as a source of information and knowledge for the citizens and the authorized people in their individual capacity; they served a much higher purpose too. Collectively, their presence ensured that no court of law or government or consultative assembly could ever pronounce a decision that went against the Qur'an and the Sunnah. Their learned collective opinion strengthened the back of the Islamic system. Their alertness at pointing out errors in every flawed judgment guaranteed the smooth functioning of the system. Their unanimous opinion on any issue was evidence enough that the verdict of *deen* was explicit in that particular case and that no decision can be taken in refutation of the same. If there was a difference in their opinions, it meant that there was a possibility of two or more suggestions, even if the decision was finally based upon only one of those suggestions. It was impossible for any innovation to gain ground and flourish in the Muslim community

¹ Those acts that were performed during the Prophet's age and he let them continue unchanged.

while they were around, for they would take strict notice of any such deviation.

- b. The Court. Its parameters can best be defined by a decree issued by Caliph Umar (God be pleased with him) to Justice Shuraih. It reads:

قضى بما فى كتاب الله، فان لم يكن فى كتاب الله فبسنة رسول الله صلى الله عليه وسلم، فان لم يكن فى كتاب الله ولا فى سنة رسول الله صلى الله عليه وسلم فاقض بما قضى به الصالحون فان لم يكن فى كتاب الله ولا فى سنة رسول الله ولم يقض به الصالحون فان شئت فتقدم و ان شئت فتأخر ولا ارى التأخر الا خيرا لك والسلام عليكم- (النسائي، كتاب آداب القضاة)

*"Issue your verdicts on the basis of Qur'anic injunctions. If you do not find any such injunction in the Qur'an, then judge on the basis of the Sunnah of Prophet Muhammad ﷺ. If you do not find the relevant command in either of these, then judge according to the (precedent) verdicts issued by the righteous. However, if the solution to the case at hand cannot be found in any of these, you are free to either judge according to your own wise discretion or reserve your judgment. And I feel it would be better for you to reserve your judgment."*¹ [Nisai]

The same parameters have been expounded upon by Abdullah ibn Mas'ood (God be pleased with him) in the following words:

قد اتى علينا زمان ولسنا نقضى ولسنا هناك ثم ان الله عزوجل قدر علينا ان بلغنا ما ترون فمن عرض له منكم قضاء بعد اليوم فليقض بما فى كتاب الله فان جاء امر ليس فى كتاب الله فليقض

¹ Reserving one's judgment can imply two things. Either the judge can wait for some time and see whether another court sets a precedent in a similar matter or not, or the judge can refer to the third institution that we would be discussing instead of delivering the judgment himself.

بما قضى به نبيه صلى الله عليه وسلم فان جاء امر ليس في كتاب الله ولا قضى به نبيه صلى الله عليه وسلم فليقض بما قضى به الصالحون فان جاء امر ليس في كتاب الله ولا قضى به نبيه صلى الله عليه وسلم ولا قضى به الصالحون فليجتهد رأيه ولا يقول انى اخاف انى اخاف فان الحلال بين والحرام بين و بين ذلك امور مشتهات فدع ما يريبك الى ما لا يريبك- (النسائي، كتاب مذکور)

"Gone are the times when neither did we issue verdicts, nor did it behove us to do so (i.e. during the Prophetic era). Now, destiny has landed us in this situation that you are all witness to. Accordingly, if a case is brought before any of you to judge, he should judge on the basis of the Qur'an. And if the solution to the case cannot be found in the Qur'an, then judge according to the judgment issued by the Prophet ﷺ. And if the case involves a matter about which there is no command in the Qur'an and the Prophet ﷺ has also not issued any judgment in that regard, then follow the precedent set by the righteous in similar cases. However, if you happen to face a case whose solution cannot be found in the Qur'an, or the Prophet's judgments, nor is there any precedent found in the rulings of the righteous, then employ your wise discretion to try and arrive at the truth. Do not say 'I'm scared', for the halal (permissible) and the haram (forbidden) have both been explicitly conveyed, and there are some other matters between these two extremes that are of doubtful nature. So in the case of doubtful matters, a man should judge in a way that does not prick his conscience, and he should refrain from issuing a judgment that goes against the call of his conscience." [Nisai]

These Courts not only judged between ordinary citizens but also heard people's pleas against the state executive and issued verdicts accordingly. It had the power

to summon even the Governor of the province and the Caliph of the nation. Similarly, if any high ranking official of the executive- even the incumbent Caliph and the government itself- had any personal or official claim against anyone, he had to approach the courts. It was the sole prerogative of the court to issue a judgment in these cases on the basis of the law emanating from the Qur'an and the Sunnah.

- c. The Oolil Amr, i.e. The Caliph and his Shoora (Consultative Assembly). This was the final institution of authority. In accordance with Qur'anic guidance, its members used to consult amongst themselves and decide which rulings of the Qur'an and the Sunnah could be applied to solve the various issues faced by the society and the government. And in case no such ruling could be found in the Qur'an or the Sunnah on a particular issue, they used to decide what could be the best possible approach to address that particular issue, taking into consideration the principles of Islam and its underlying spirit and the greater good of the Muslim community. Most of the decisions taken by this body have been preserved in the books of Hadith, Aasar and Fiqh (jurisprudence). We can also find supplementary notes dealing with the detailed arguments put forward by the respectable Companions present in that assembly that had led to those decisions being taken. When we study these papers, we realize that this assembly strictly followed the general principle that in each matter it would be the Qur'an that would be the first to be referred to. Next, the Prophet's approach in that matter would be investigated into, if such a case had ever been presented before him. Their own discretion would be exercised only if both these sources of guidance are silent on the concerned issue. In every such case where they could find the relevant ayat from the Qur'an or an example from the Sunnah of the Prophet ﷺ, they have never deviated from it to exercise their own opinion.

There is not even a single case during the entire era of the Companions where an exception was taken to this principle. Although the final authority- for all practical purposes- rested with the *Oolil Amr*, they used to- as a principle of law- regard the Qur'an and the Sunnah as the final decisive authority. Moreover, the authority of the *Oolil Amr* was acknowledged and obeyed by the Muslim society on the basis of this very faith and conviction that they would not divulge from the Qur'an and the Sunnah while making their decisions. No member of Muslim society had ever entertained in his mind the notion that they are authorized or even allowed to draft a law or make a decision that is repugnant to the Qur'an. Similarly, it never crossed their mind that just as the Prophet was the final authority during his time, we are the final authority in ours, and that we are not obliged to follow the precedent of the Prophet in the commands he had issued. The day the institution of Caliphate was founded and the first Caliph took oath, he began his office by proclaiming:

اطيعوني ما اطعت الله ورسوله فان عصيت الله ورسوله فلا طاعة لي عليكم-

"Obey me as long as I keep obeying God and His Messenger. And if I disobey God and His Messenger, you are not at all obliged to obey me."

This proclamation makes it amply clear that the very basis on which this institution of Caliphate was founded was the understanding and agreement that the Caliph would obey God and His Messenger and the people would in turn obey the Caliph. In other words, the people's obedience to the Caliph was hinged upon the condition that he would follow the injunctions laid down by God and His Messenger. The people stood automatically absolved of the obedience to the Caliph if this condition was not met.

The Call of Common Sense in Resolving Disputes

Now use your common sense to understand the import of the ayat being discussed and how its requirements can be fulfilled. This ayat addresses the entire Muslim society and makes three sequential levels of obedience binding upon them- that of God, then the Messenger and then the *Oolil Amr* among that society. In case of a dispute, it instructs them to refer back to God and the Messenger for a solution. What is thus apparent from this ayat is that it is God and the Messenger that society is primarily obliged to obey. The obedience to the *Oolil Amr* (people in authority) is subject to the obedience to God and the Messenger. Disputes can arise not only among the people, but also between the people and those in authority. And in all cases of dispute, the final decisive authority rests not with the *Oolil Amr*, but with God and the Messenger. Everyone is required to submit before the decision of God and the Messenger- be it the people or the *Oolil Amr* themselves.

Now the first question is, 'What is meant by referring to God and the Messenger?' It is obvious that referring to God does not mean that God would be present in person before us and we would present our cases before Him and seek His judgment. Rather, it means that we would look into His Book and try to understand what command it contains for the disputed case at hand. Similarly, referring to the Prophet also cannot imply that the person of the Prophet would be referred to. Instead, even this would mean that we would derive instructions from the teachings of the Prophet and his words and actions. It was not possible even during the lifetime of the Prophet for all the citizens of the nation- from Aden to Tabuk and from Bahrain to Jeddah- to personally present all their disputes before the Prophet and obtain his judgment. The Sunnah of the Prophet must have been the source of rulings in that age as well.

The next question is, 'What can be the procedure of deriving judgments from the Qur'an and the Sunnah in

cases of dispute?' It goes without saying that it is human beings who would have to deliver these judgments- the Qur'an and the Sunnah cannot be expected to speak up for themselves. But these human beings ought to be those who have a thorough knowledge of the Qur'an and the Sunnah. Also, they should not be the ones who are party to the dispute; rather, the arbitrator should be a neutral third party- either an individual or an institution- who would adjudicate in their disputed case. The arbitrator would be selected depending upon the specific nature of the dispute. There is one form of dispute that every wise and intelligent man can judge. There are other forms of dispute that compulsorily require the intervention of a court of law. And there are certain other forms of dispute that just cannot be solved unless brought before the *Oolil Amr*. But the Qur'an and the Sunnah should nevertheless be the ultimate source from which the judgment is derived- irrespective of the level of arbitration.

This is something that every person with a common sense can deduce, provided he ponders over this ayat with unprejudiced eyes. Now let us also see how the accepted norms of the world in this regard can help us in understanding the system prescribed by this ayat and how it can be practically implemented. A lot is being spoken about the Rule-of-Law these days. It is averred that the superiority of Law is indispensable for the establishment of Justice, a Law that does not discriminate between the mighty and the weak, and one which can be enforced equally upon the common man, the ruler and even the government of the day without any restraint whatsoever. Even the Parliament that has made this Law would be subject to it as long as this Law exists. Four factors have always been considered essential wherever this concept of Rule-of-Law has been implemented. These are:

- a. A Society that respects the Law and has a sincere intention to follow it.

- b. The presence of a large number of men in that society who have knowledge of that law; who can help people in abiding by that Law and whose collective presence and influence would serve as a guarantee that neither would society deviate from this Law, nor would the political authority ever be audacious enough to do so.
- c. An unbiased Judiciary that can arbitrate between the citizens and the government on the basis of this Law and arrive at a proper decision.
- d. An institution of supreme authority that would prescribe final solutions to all the issues and matters faced by society, this solution acquiring the status of Law and getting implemented in society.

If you happen to reflect upon whatever has been stated above, you would realize that the ayat under discussion actually establishes the Rule-of-Law in society. Its implementation requires the same four factors that we have enumerated above. The only difference, if at all, is that the Law it seeks to establish indeed deserves these factors, while the other laws prevalent in this world do not deserve them. It declares the divine and prophetic Law to be the Supreme Law, before which each and every person ought to submit, and which is equally binding upon everyone. It addresses a society that would believe in this Law, has faith in it and would follow it with all its heart and soul. It requires the presence of a large number of *Ahle Zikr* in the society to be truly successful, who could help the members of society at all times and at all places in obtaining guidance about the Supreme Law in the matters concerning their lives, and through whom the collective conscience of the people would always remain alert for the safeguard and protection of this system. It also requires a judicial system that would not only arbitrate among the citizens but also between the citizens and the state in accordance with the Supreme Law. It also stands in need of an institution of *Oolil Amr* that would be subject to this Supreme Law and would employ its final authority to interpret and deliberate

upon this Law to seek out solution to the collective issues faced by society.

Tarjumanul Qur'an

Rajab 1377 AH/ April 1958 CE

The Status of Sunnah as a Source of Law

The following is an analysis written by the author on a letter written by Justice S. A. Rahman. This letter is actually part of an exchange of letters between Justice S. A. Rahman and Prof. Abdul Majeed Siddiqui published in Tarjumanul Qur'an. The sole purpose of reproducing this discussion here is to allow the readers to gain a perspective into some vital issues concerning Sunnah that have been touched in these letters. The letter itself has not been reproduced here in its entirety because relevant parts of the letter have anyway been quoted in the analysis that follows.

The learned writer has enumerated certain arguments in favour of his views. Of these, the third point warrants a discussion. The point has been drafted in such a brief and concise manner that it can lead to some serious misunderstandings. Hence, I shall make some remarks on his arguments with the hope that he would give them a serious thought.

Prof. Siddiqui has expressed his view that "If at all, the only thing that should be investigated while reviewing the *fiqh* compiled by the Imams of jurisprudence is whether any particular *ijtihad* or *istinbaat* of theirs is in accordance with the Qur'an and the Sunnah or not". The learned writer has responded to this by saying:

"As far as the Qur'an is concerned, everyone would agree to it (with due liberty of exegesis and interpretations). But as you know, the issue of Sunnah is a contentious one."

These words that have been employed by the writer suggest that while the Qur'an is definitely a valid source and authority when it comes to deriving Islamic rulings, he is reluctant to accord the same status to the Sunnah because it is a 'contentious issue'. Now it is not clear from his statement what exactly the point of contention is.

Is the Sunnah being a source of Islamic law the point of contention?

If it happens to mean that the status of the Sunnah itself (i.e. the words and deeds of the Prophet ﷺ, and his commands and prohibitions) is a contentious issue- as to whether it is indeed a source of Islamic law and a reference for its rulings or not- then let me tell you that this is not at all true. This has never been a point of contention among the Muslim in the entire history of the Muslim Ummah. It has always been accepted by the entire Ummah that the Prophet has been sent by God so that he might be obeyed and followed by the Muslims. It is incumbent upon each and every Muslim to obey his commands and follow his rulings on what is permissible and what is prohibited. We are duty-bound to follow the path he has shown us by his words and actions and his *tagreer*¹. We are not at all authorized to make an independent decision in any matter concerning our lives in which the Prophet has already made a decision. We are not aware of anyone who has ever contested this point in all these centuries of Islamic history. A few stray individuals harbouring deviant views and rebellious tendencies have always existed in every community of the world. If such individuals have ever dissented against the unanimous creed of the community, it would not be taken to mean that a universally established matter has now become contentious and it, therefore, no

¹ Those acts that were performed during the Prophet's age and he let them continue unchanged or he saw someone doing an act but did not prevent him from doing so.

longer remains an established one. Even the Qur'an, for that matter, has not been spared by such deviant people. There have been people who have levelled charges of distortions in the Qur'an as well. So are we now expected to entertain their allegations and assume that even the status of the Qur'an- as being a source and reference of Islamic law- is a contentious issue?

Does the possibility of having differences in opinion come in the way of the Sunnah being a source of Islamic law?

But if the point of contention does not relate to the status of Sunnah being a source and reference for Islamic law per se, and the real contentious issue that does and has occurred is whether the clause that has been claimed to be a 'Sunnah' in a particular argument is indeed a genuine 'Sunnah' or not, then let it be known that similar differences have been encountered while deciding upon the import and interpretation of Qur'anic ayaat as well. Every scholar can rake up this issue that the ruling that has been derived in a particular matter from the Qur'an might not necessarily be the actual intended derivation of the Qur'an. The learned writer has himself mentioned the presence of differences in opinion as far as exegeses and interpretations of Qur'anic ayaat are concerned, and he accepts the Qur'an as a source and reference despite these possibilities of differences in opinion. Why should there then be any reluctance in accepting 'Sunnah' as a source and reference of Islamic Law given the possibility of having differences in opinion with regards the soundness of investigation and genuineness of a particular Sunnah in a particular matter?

It cannot escape the knowledge of an accomplished expert of law of the stature of the learned writer that the specific interpretation of a Qur'anic injunction that an individual, institution or court eventually declares as the import of that injunction from among its various possible interpretations- after employing the accepted and standard

academic means of exegesis and interpretation- is *the* command of God to the best of his reach and knowledge, even if it cannot be decisively claimed that it indeed *is* the actual command of God. In exactly the same way, the Sunnah that comes to be accepted as genuine by a jurist, legislature or court in a particular matter- after having employed the proper academic means of investigation into it- is *the* command of the Messenger for him, even though it cannot be conclusively stated that it indeed *is* the command of the Messenger. In both these cases, while we can definitely have a difference of opinion on what the exact command of God or His Messenger actually is, we can never disagree on whether following the command of God and His Messenger (per se) is obligatory upon us or not, as long as we both happen to accept God and His Messenger as the Final Authority. Hence, I am unable to understand what Justice S. A. Rahman means when he states that while he accepts the Qur'an as a reference and authority for the investigation of juristic rulings despite the inherent differences that can and have occurred while determining its import, he is reluctant to accord the same status to the Sunnah ostensibly because there can and have been differences in referring to the Sunnah in matters concerning component issues.

Is the presence of fabricated aHadith really a cause of apprehension?

Further down, the learned writer explains why he does not regard the Sunnah as an authentic source. He says that 'A number of fabricated aHadith have found their way into standard collections of Hadith'. He also avers that 'Voluminous books have been written on this topic'. Apparently, what he means to convey is that the Sunnah is a doubtful entity. It is quite possible that it is his economy of words that has led to this misunderstanding and this is not what he actually meant. But if this is precisely what he meant to convey, I would advise him to give it a second

thought. He would, God willing, soon realize that the factor that he understands to be an argument for the Sunnah being doubtful actually happens to be the very factor that convinces us that it has been safely preserved. For the moment, let me pass over the question of which are those standard collections of Hadith that contain fabricated aHadith. Although all the compilers of Hadith have taken pains at ensuring to the best of their capacity that only reliable narrations are included in their collections, the exceedingly high standards adhered to by the six canonical Hadith collections and Muwatta are well known among intellectual circles.

Even if, for the sake of argument, we do suppose that all these collections have been infiltrated with some fabricated aHadith, the question that needs to be asked is: What, then, is the topic dealt with in those 'voluminous books' that the learned writer has mentioned? Is it not that these books deal with the same topic- which are those aHadith that are fabricated, who are those narrators who are liars and fabricators, which are those places where fabricated aHadith have got included, which narrations of which book are unreliable, which narrations can be relied upon and which cannot be, by what means can the fabricated aHadith be distinguished from the authentic aHadith and what are the possible ways of investigating into the strength, weakness, defect and other parameters of a narration?

The knowledge of the existence of these voluminous books gives us a sense of immense relief... the same relief that a person would get when he comes to know that almost all the thieves have been arrested, imprisoned in jails, most of the stolen assets have been recovered and there is an organized system of investigation in place which would ensure the arrest of thieves in the future as well. But it would be quite surprising if the same news makes a man nervous and apprehensive and he cites it to prove that there is unrest in society. It would indeed have been an ideal

condition of peace and security if there would not have been any thefts at all. Agreed, that such incidents do give rise to some insecurity and concern. But a complete state of peace and security is something that we do not find in any matter, do we? Hence, there is no reason why we should expect it in this particular case. The condition that generally affords us peace and security in this world is achievable even if most of the thieves have been arrested and we are assured that there is a viable system in place to arrest the few remaining ones as well. Would our honorary judge of the Supreme Court not show satisfaction at as much security as far as the Sunnah is concerned? Would he not settle for anything less than a state of absolute security where there is no incidence of theft at all?

How is the strength of a narration determined?

The learned writer concludes by saying that:

“I am not in favour of any extreme view in this matter. Those *Sunnane mutawarith* (uninterrupted practice that an entire generation inherits from its predecessor and passes it on to its successor) that are related to modes of worship like prayers or the rites of Hajj are secure and preserved. However, the rest of the Hadith literature should be judged not only on the basis of *riwayat* (strength of narration) but also on the basis of *darayat* (expert opinion based on relevant circumstances) before being accepted as an argument. I believe in a historical evaluation.”

This view is correct to some extent. But there are some points here on which I would request the writer to reflect further. The science of Hadith is but another name for the historical evaluation that he so ardently believes in. This science is being subjected to this very evaluation right from the first century to date. No jurist or Hadith scholar has ever blindly accepted a narration attributed to the Prophet ﷺ - whether it deals with rites of worship or worldly dealings - as an argument without conducting a historical

evaluation of that narration. This science is, in fact, the finest example of this evaluation; it is difficult to cite even the best of modern historical evaluation techniques as any significant improvement upon it. I would even go a step further and claim that the techniques of evaluation adopted by the Hadith scholars are so refined and nuanced that our contemporary researchers have yet been unable to reach their level. Why, I can claim with all responsibility that it is the historical record of the practice, the life and times of Prophet Muhammad ﷺ alone that could bear the stringent standards of evaluation that have been set by the Hadith scholars. The historical data of no other person or era has been strong enough to meet the unyielding criteria set by this evaluation technique and allow that data to be accepted as a reliable historical record. It is quite unfortunate that our modern day intellectuals do not study this science in detail, while those traditional scholars who possess expertise in this field are unable to repackage it and present it the form and language that is understood by today's generation. It is for this reason that- let alone the outsiders- even our own people are heedless of its true value. For, the fact remains that even if a single aspect of this science of Hadith is laid out before the world, it would come to know what historical evaluation truly is. Nevertheless, I would still say that there is still scope for further advancement and improvement in this field. No person can claim that the techniques adopted by the Hadith scholars to investigate into the narrations are unsurpassable. Even today, if a person gains expertise in this science and points out a flaw or defect therein and presents some better, more reliable investigative techniques on the basis of sound arguments, such a contribution of his would definitely be welcomed. After all, who amongst us would not wish that we should be absolutely sure of the authenticity of a narration before attributing it to the Prophet ﷺ, so that narrations of a doubtful nature are not attributed to him?

The status of *darayat*¹ (Expert opinion)

It is unanimously accepted- and has been pointed out by the writer too- that the use of *darayat*, along with evaluating the strength of narration, is an important tool in the investigation of any Hadith. Although there have been differences among the jurists and Hadith scholars with regards the exact definition, premises and principles of *darayat*, they are all largely unanimous that it is an important tool in itself, and it has been used right from the times of the respectable Companions to date. Having said that, the point that needs to be kept in mind- and I am sure the learned writer would agree with me- is that the *darayat* of only those people can be considered reliable who have spent a lifetime in the study and research of the Qur'an, the Hadith and Islamic jurisprudence, and whose extensive experience has developed within them the insight of a veteran jeweller. Moreover, such people should not have a tendency of judging Islamic narrations on the basis of those ideas, principles and values that lie beyond the framework of Islamic thought and ideology. Verily, neither can we impose restrictions on the use of one's intellect nor can we rein in their tongues. However, it is quite certain that if people who are bereft of Islamic knowledge were to naively accept a Hadith that suits their taste and reject another Hadith just because they find it unpalatable, or if people who are born and brought up in an un-Islamic culture suddenly rise up and rampantly start employing strange and unfamiliar standards to decide upon the acceptability of a Hadith, then it should be known that neither would their *darayat* find any acceptance within the Muslim community nor can the collective conscience of this community ever feel at ease with such senseless intellectual verdicts. Only that intellect can ever be resourceful in an Islamic framework that has been nurtured by Islam and one which is in sync with Islam's nature and

¹ For a detailed discussion on *darayat*, readers are requested to refer to the first volume of this series... Translator

temperament. An intellect that shows hues of foreign tradition or that which has not been nurtured by Islam can only spread corruption, it can never contribute to anything constructive in this field.

Arguments in support of the Sunnah being reliable

It is difficult for us to concur with the writer when he classifies Hadith into two categories- 'the *Sunnane mutawarith* that are related to modes of worship' and 'the rest of the Hadith literature', and then claims that while the former is 'secure and preserved', the latter needs to be investigated into. Apparently, the thought-process that is running in the background of this categorization is that since the rites of worship that the Prophet ﷺ had taught the Muslim got practically implemented in the community and generation after generation has been following it, these inherited forms of Sunnah have remained safely preserved. As for the other matters of life, neither did the prophetic guidance get practically implemented, nor was any cultural or social system based upon it- neither did it find acceptance in markets and businesses, nor were court judgments based upon them. Hence, they remained confined to mere 'narrations' that were passed on by a few scattered individuals to others, and it is from this heap that we would now have to carefully pick out the reliable narrations. If the perspective of the learned writer differs from what I have stated, I would be very grateful if he would clear my misunderstanding. But if this is exactly what his perspective is, then all I would like to say is that it does not concur with historical facts.

The fact of the matter is that the Prophet was not only a sage and preacher; he was also the leader of the Muslim community, their guide, judge, administrator, legislator, trainer, teacher- all rolled into one. The entire setup of the Muslim society- right from its creed and ideology to all its possible practical aspects- was established on the very

manner that was presented, taught and decided by the Prophet ﷺ. Hence, it was never the case that the only prophetic teachings that came to be established in the Muslim community were those that related to prayers, fasting and Hajj, and that all the other teachings were relegated to sermons and directive principles that the Muslims heard and turned a deaf ear to. Rather, what actually happened was that just as the prayer that he taught was immediately implemented in the masjid and the people started offering their prayers accordingly without the slightest delay, the Muslims- concurrently- also began executing their family affairs according to the laws issued by the Prophet on marriage, divorce and inheritance, the markets began to transact trade and business in line with the prophetic guidelines, the verdicts he issued in judicial cases took the form of state law, the manner in which he treated his enemies in battle and the citizens of conquered lands became the war conventions of the Muslim society.... In short, the Muslim society and its culture came to be entirely established on the very principles that the Prophet had himself introduced or those from earlier times which he let remain unaltered and included them as part of the Islamic practice. These were those renowned and well-known elements of Sunnah that came to be implemented and began being practiced in all the institutions dealing with the collective lives of Muslim society- be it the masjid, the family, the market, the court, the government assembly or the international political arena. Beginning from the lifetime of the Prophet and continuing into the era of the Rightly Guided Caliphs to the present day, the framework of our community institutions continue to be based upon these very elements of Sunnah. Till as late as the previous century, these institutions kept on functioning uninterruptedly. Whatever interruption we notice thereafter can be squarely blamed on the disruption of the institutions of governance, judiciary and public law. If you are indeed convinced of the preservation of '*Mutawarith Sunnah*',

then please note that *all* these well known and renowned practices- those dealing with the rites of worship as well as those dealing with worldly affairs- are nothing but '*mutawarith*' (inherited) in nature. We have the authentic narrations of Hadith as well as the uninterrupted practice of the Muslim Ummah complementing each other in this regard. Whatever falsehood that has crept therein at any point of time- owing to the Muslims going astray- has been timely identified and branded as an innovation by the religious scholars of that time. We have proper historical record of almost every such innovation introduced after the Prophet ﷺ as to when it began flourishing in the Muslim community. The Muslims have never found it difficult to distinguish these innovations from the well-known and renowned Sunnah of the Prophet ﷺ.

The Status of Akhbaar Aahad (solitary reports)

Apart from those well-known and renowned forms of Sunnah, there was another kind of Sunnah that did not gain wide renown during the era of the Prophet ﷺ. These were those Sunnats that had come to the knowledge of just one or a few individuals at various scattered occasions from some verdict, decision, statement, command or prohibition, permission or *tagreer* or some other practice that they had seen or heard from the Prophet, and which could not get communicated to the Muslims at large. These practices related to the rites of worship and worldly dealings alike; it would not be right to assume that they related only to worldly affairs. The Muslim community began with the task of compiling data on these scattered elements of Sunnah- that was preserved with these individuals- immediately after the demise of the Prophet. This was required because the Caliphs, the governors, the judges, the jurists and even the common people deemed it necessary to ascertain whether there was any pertinent guideline from the Prophet before they could venture into forming their

own opinions or making their own decisions about matters related to their respective domains. In view of this necessity, they began to seek every such person who had any piece of knowledge about the Sunnah of the Prophet. Those persons who possessed such knowledge also came forward and shared their knowledge with others, considering it to be a moral obligation. This is the inception of Hadith narrations. The process of collecting those individual scattered Sunnats that began in the year 11AH continued till the end of the 3rd and 4th centuries. Almost all attempts at inserting fabricated aHadith in this collection have been foiled. This is because the government and courts and juristic institutions could never have been so callous or negligent about those Sunnats¹ on which injunctions and rulings were based- on the basis of which someone's right could be upheld or annulled, an entity could be declared permissible or impermissible or a person could be punished or acquitted- that any person could just rise up and utter, "The Prophet said so-and-so...." and the governor or judge or jurist would deliver a judgment on its basis. It is for this reason that those Sunnats that were related to injunctions and rulings were thoroughly scrutinized, they were made to pass through the most stringent evaluations, they were examined on the criteria of *riwayat* (strength of narration) as well as *darayat* (expert opinion) and all the data that went in favour or against a narration was meticulously compiled so that people of later generations might also know on what basis a particular narration was accepted and why another was rejected, allowing them to form an informed opinion of their own. While a substantial part of this Sunnah is commonly accepted and agreed upon by the jurists and Hadith scholars, there is another part that is disputed. There are certain scholars who have regarded a particular act as

¹ Please excuse me for having taken the liberty of using the word 'Sunnats' as a plural of 'Sunnah'. I have done so for ease of understanding and to maintain brevity... Translator

Sunnah, while certain others have not. However, all such differences have been duly discussed by the scholars all these centuries, and a detailed description of the arguments of all contending perspectives and the fundamental sources from which these arguments have been derived can be found preserved in the books written by jurists and Hadith scholars. Today, it is not at all difficult for a research scholar to decide for himself whether a particular act is a Sunnah or not. Hence, I do not think there is any valid reason why anyone should be apprehensive of 'Sunnah'. It is, however, an altogether different matter with those who have no inkling of this field and who turn anxious upon simply hearing about disagreements over aHadith.

The Distinguished Status of aHadith dealing with Injunctions

It should also be clearly understood in this regard that those aHadith that do not deal with rulings or injunctions and instead relate to topics like historical incidents/episodes, *fitan* (discords), *malahim* (battles), *riqaaq* (sermons that melt the heart), *manaqib* (qualities) and *fazail* (virtues) have not been subjected to the same scrutiny and stringent evaluations as have those that deal with topics related to rulings and injunctions. Hence, the infiltration of fabricated narrations, if at all, has largely been possible only in those chapters that contain narrations that deal with these topics. The injunctive Sunnats have almost completely been purged of fake and doctored narrations. While they do contain narrations that have weak chains, it is rather impossible to point out a fabricated Hadith in this category. And if any school of jurisprudence has accepted a weak-chained Hadith, it is for the sole reason that they have found it to be in accordance with the Qur'an, the recognized structure of known Sunnah and the holistic principles of Islamic law. In other words, even if they are weak by narration, they are strong on the *darayat* front.

The reason I have presented this elaborate analysis on the relatively few lines written by the respected writer is that these lines come not from an ordinary man, but from a man of honour who happens to occupy the esteemed chair of the judge of our Supreme Court. The slightest misgiving or reservation about the legal status of Sunnah in the minds of people belonging to such positions can have a disastrous cascading effect. In recent times, we have had remarks by people belonging to the upper echelons of the judiciary that fall short of being in accordance with the proper academic perspective in this regard. Hence, I ardently request not only the learned writer but other judges of the judiciary as well to study the points that I have discussed in this article with the same unprejudiced approach that is expected of them.

Tarjumanul Qur'an

December 1958 CE

Section 2:

The Wisdom in Deen

- **Consideration of Needs and Expediencies in Islam- its Rules and Principles**
- **The Status of Diplomacy in Deen**
- **Backbiting and its injunctions**
- **Backbiting: A Decisive Argument**
- **Backbiting- the other side of the debate**
- **Two important discussions**
- **Islam and Social Justice**

Consideration of Needs and Expediencies in Islam

Rules and Principles

Certain Allegations levelled against the author on his views on Diplomacy

The author had written an article titled, 'Jama'at ka Mauqoof aur Tareeqekaar' (The stand of the Jama'at and its methodology). In response, a person wrote to him saying:

"In your December '56 (Rabi alAkhar '76) issue of Tarjumanul Qur'an, you have replied to the letters of a person wherein you have written that "We are not running our movement in a vacuum; we are running it in the practical world. Had the proclamation of truth been our sole objective, we would have sufficed at bluntly speaking out the truth. However, since we have to also go a step further and try to establish the truth, and have to pave our way ahead in this very practical world, we have to maintain a balance between idealism and diplomacy".¹ You had also written that "It is strategy that dictates which means should be adopted on a priority basis while pursuing our ultimate goal, which opportunities should be benefitted from, the clearance of which hurdles should be part of our aim, and which of our principles we need to rigidly adhere to and which are those about which we need to be flexible enough to accommodate for expediencies".

¹ Please refer Rasail wa Masail Vol 4, Chapter: Islamic Movement.

In order to explain the balance that needs to be maintained between idealism and diplomacy and creating flexibility in certain principles to accommodate for expediencies, you have cited the following example from the Sunnah of the Prophet: One of the principles on which the Islamic system was based was that all racial and tribal distinctions would be abolished and all the people who constitute this brotherhood would be given equal rights. However, when the issue of who should be the head-of-state came up, the Prophet ﷺ instructed them that "The Imam (leader) should be from the Quraish tribe". You have offered an explanation for this exception by stating that, "At that time, the situation of Arabia was such that, let alone a non-Arab, even the leadership of a non-Quraish would not have been viable. It is for this reason that the Prophet asked the Companions to refrain from implementing the general rule of equality when it came to the nomination of the Caliph. For, if the Islamic system, following the demise of the Prophet, would have got disrupted in Arabia itself, who would have then fulfilled the obligation of establishing the deen in this world? This is an explicit example of the fact that it is not only against wisdom but also against religious prudence to insist upon upholding a principle that would cause harm to an objective of deen that is far more important than that particular principle".

You have then written that, 'But this does not hold true for each and every Islamic principle. We do not find any instance where the Prophet had sought to adopt flexibility in those principles that form the foundation of deen, e.g. monotheism, prophethood etc., to cater to any practical expediency. Why, such a thing cannot be even imagined'.

Some people have cited such quotations of yours, from which they have derived certain conclusions and

levelled allegations against you. They say, for instance, that "If you were to analyze the philosophy and ideology that is being attributed to Prophet Muhammad ﷺ in the garb of 'Tehreek Iqamate deen' (Movement for establishment of deen), you would realize that what it states is that the Prophet initiated a movement to establish the Islamic system and laid down certain principles for the same. Some of those principles were related to matters of faith (faith in God, faith in prophethood etc) and there is not a single instance in the entire lifetime of the Prophet when he has entertained any flexibility or exception with these principles. However, the Prophet had also presented some other principles of a different kind. For example: 'The Islamic system that I would establish would treat all whites and blacks, all Arabs and non-Arabs as equals and they would all have the same status, everyone would have the freedom of life and property, honour and dignity etc'. People saw merit in these principles and presented their services for the establishment of the Islamic system. Then came a day when this system was finally established. At this juncture, the approach adopted by the leader of the movement (Prophet Muhammad ﷺ) was: Of the ideals that he had presented before the people at the beginning of his movement and the principles that he had laid down, he decided that the latter set of principles (related to Equality, Freedom and Security of life and property) would be treated differently from the former set of principles (related to articles of faith). If any of the latter set of principles were to clash against strategic interests, i.e. implementing which would harm the 'Movement for establishment of deen', then those principles would be compromised upon and exceptions and flexibilities would be created therein." Continuing with their analyses, they have interpreted your stand by declaring that you have taken this

principle as a philosophy and creed that at the time of the establishment of the Islamic system, the leader of the Islamic movement would have the right to re-dictate the principles that were presented during the campaign-and-promotion stage of the Islamic system and on which the support of the people was enlisted. Save those basic principles like monotheism and prophethood, he would, ostensibly for the sake of the movement, be entitled to take exception to any principle that he deems fit, prevent his men from acting upon it and declare as null-and-void any of the assurances and guarantees that this movement had furnished before the masses in its initial days that he feels comes in the way of certain expediencies.

After having determined your creed as such, they have quoted the same articles wherein you have written, "We are not the creators of Islam to come up with whichever program we fancy or adopt the manner in which we personally envision the benefit of the cause of Islam." This quotation has been cited to prove that your comments are contradictory and conflicting in nature and your approach in this regard has become very puzzling. Then, these people also try to decipher this puzzle and 'read into the intricate depths of your mind' and finally conclude that while you might have been sincere with Islam earlier, you are bent upon sacrificing Islam at the altar of your personal and organizational interests after having joined Pakistani politics. It transpires that although you have lost hope of achieving success in the demand of a purely Islamic constitution, you are yet desirous of ascending to the throne. Hence, in order to salvage your principle that 'It is inappropriate to participate in a government that does not have so-and-so constitution' you have now come up with the idea of creating flexibilities in the principles itself. Similarly, your support for a separate electorate system is seen as a ploy, for you and your

Jama'at do not stand a chance in a joint electorate system. It is for this reason that you garner support from Islamic principles in this matter.

It is also speculated that the actual reason behind some people recently leaving Jama'at-e-Islami is that even they have come to believe that the only thing that matters to you now is power and authority. You are willing to adopt any policy that you feel conducive to attain this objective, at any point of time- regardless of howsoever contradictory to Islamic principles it might be. Moreover, if the need arises, you would not hesitate at interpreting Islamic principles in a way that suits your interests. According to them, there is no difference between your Islamic movement and the movements of those adventurous politicians who present absolutely chaste and virtuous principles before coming to power, but when they achieve power they dishonour those promises and principles. They deem it permissible to flex and alter Islamic principles, as per their understanding, to serve some immediate expediency.

Nevertheless, since such discussions and objections are being raised, and there are many people who are falling prey to misconceptions, it is most appropriate and indeed necessary that you should clarify the actual import of your controversial remarks and explain the truth behind the allegations that are being levelled against the policy of the Jama'at."

The Author's Reply

I keep coming across the pungent remarks that have been made on the article you have mentioned in your letter. But I have responded to them with the same patience and forbearance that I have exhibited on the various *fatawa* (edicts), negative publicities and articles published against me by a number of people. I would rather utilize the short lifetime and limited abilities of writing and speech that

have been granted by God for some productive work, in the hope that it would somehow serve His *deen* in this world and atone for my sins in the hereafter. I am not at all comfortable with the idea of wasting this little time and limited resources in such debates that apparently do nothing but embarrass the *deen* and its followers in this world and make us accountable for each and every word before God on the Day of Judgment. Even now, I have no interest in replying to those caustic remarks that have been made on my writings. All I would like to do is clarify my stand, so that people who have been swayed away by misinterpretations might have their minds cleared of all misgivings.

The statement that has been reproduced in your letter is sufficient enough to explain my stand.

"It is not only against wisdom but also against religious prudence to insist upon upholding a principle that would cause harm to an objective of deen that is far more important than that particular principle."

Any person who ponders over this statement without harbouring any pre-conceived notion or prejudice would never misunderstand what I mean to convey. All that I mean to say is that, ideally speaking, every correct principle deserves to be established and every wrong principle is worth being uprooted. However, if you look at practical life, in this struggle of good and evil, man is faced with many such situations when insisting upon a smaller good closes the doors upon a greater good and refraining from a smaller evil opens up the doors to a greater evil. It is the call of reason in all such cases that an entity of greater value should never be sacrificed to acquire something of lesser value. It is also the call of the prudence espoused by divine law that a smaller evil should be tolerated in order to ward off a greater evil and that a greater good should not be harmed in favour of a lesser good. I am not in the least inclined towards regarding reason as the only factor in this matter, which would inadvertently allow a person to free

himself of the bonds of Islamic principles and laws and injunctions, as per his whims and fancies, under the pretext of practical concerns. The statement written above makes it clear that I am speaking about *that* particular wisdom which employs Islamic yardsticks to decide which thing needs to be sacrificed in favour of which other thing, and in what circumstances and to what extent can it be done.

Now let us see whether this is the product of my own imagination or there indeed does exist a difference in value between the various principles, laws and injunctions that have been laid down by Shariah and if there is any such rule that allows something of a lesser value to be sacrificed for a more valuable thing. Listing down all such examples that we find in the Qur'an and the Hadith and the life of the Companions, the Jurists and Hadith compilers would be too onerous a task. I would suffice at mentioning a few examples only:

The Discussion in the light of Examples:

1. The importance that Islam attaches to monotheism is well-known to each and every person. This is the primary requirement in the path of truth and the first thing that Islam expects from every believer. Ideally speaking, there should not be any scope for flexibility or compromise in this matter. The mark of a true believer is to remain unwaveringly steadfast upon his proclamation of monotheism, even if his throat is slit open and his body is chopped to pieces. However, in such extreme situations where the life of a believer is at stake or he is being subjected to unbearable torments at the hands of oppressors, the Qur'an allows him to utter the words of disbelief and save himself from the torture, provided his heart remains firm on monotheism.

مَنْ كَفَرَ بِاللَّهِ مِنْ بَعْدِ إِيمَانِهِ إِلَّا مَنْ أَكْرَهَ وَقَلْبُهُ مُطْمَئِنٌّ بِالْإِيمَانِ (النحل: ١٠٦)

"Whoever disbelieves in Allah after his belief... except for one who is forced (to renounce his faith), while his heart is secure in faith...." [Surah anNahl ayat 106]

Although this is not the state of idealism, it definitely is the state of allowance; and this allowance has been granted by God Himself. This shows that the Shariah values the life of a believer more than the proclamation of monotheism. If in case there does arise a situation in which one of these needs to be sacrificed, the Shariah is willing to bear with the sacrifice of monotheism. But is it also permissible to propagate disbelief to save one's life? Can another Muslim person be killed as well? Is it also permissible to engage in espionage against an Islamic state? The straight and clear answer is NO. Because this would entail the sacrifice of something much more important than the sacrifice of one's life... something that can never be allowed.

2. Drinking alcohol, having the flesh of pigs, already dead animals and those that have been sacrificed in the name of a deity other than God are as strictly prohibited as are *zina* (adultery and fornication), theft, plunder and murder. But if there is a life-threatening situation, Shariah allows for the consumption of alcohol, pork and otherwise prohibited kinds of meat because these acts are of a lesser value as compared to a person's life. On the contrary, even if a person is held at gunpoint, Shariah would never allow him to violate the sanctity of a woman or murder an innocent soul. Similarly, no matter how dire the situation, the Shariah never allows anyone to steal someone's property or indulge in loot and plunder to make his ends meet. This is because these acts of evil are worse in consequence than succumbing to death.
3. Truth and honesty are the hallmarks of Islam and among its most vital principles, while lying is seen as an absolutely despicable act of sin. Having said that, there are some avenues of practical life where lying is

not only allowed but it has also been designated as mandatory in certain conditions. If merely covering up the truth seems insufficient in matters involving reconciliation between people and preservation of marital ties, the Shariah has explicitly allowed us to resort to speaking a lie to the required extent.

Lying is not only permissible in warfare, it is also obligatory at times. For instance, if a Muslim soldier is captured by the enemy and the enemy asks him to divulge the battle-plan of the Muslim army, it becomes incumbent upon the soldier to furnish them with false information and save the Muslim army; telling the truth in this case would be a grave sin. Similarly, if a tyrant is in pursuit of an innocent soul and that helpless person seeks refuge with someone to save his life, it would be a sin to speak the truth and disclose his hiding place and it would be mandatory to save his life by uttering a lie. Please go through the ruling of Shariah in this matter:

عن ام كلثوم بنت عقبة بن معيط قالت سمعت رسول الله صلى الله عليه وسلم يقول ليس الكذاب الذي يصلح بين الناس فينسى خيرا (متفق عليه) وفي رواية مسلم زيادة قالت ولم اسمعه يرخص في شيء مما يقوله الناس الا في ثلث يعني الحرب والاصلاح بين الناس وحديث الرجل امراته وحديث المرأة زوجها.

Umme Kulsum bint Uqbah bin Mu'eet narrates that she heard the Prophet ﷺ say, "He who makes peace between people and speaks and spreads good words for this purpose is not a liar". [Bukhari, Muslim]

The narration recorded in Muslim also has the words, "She added, I have never heard the Prophet allow people to act in the way they usually do except in three matters: battle, reconciliation between people and marital issues".

عن اسماء بنت يزيد عن النبي صلى الله عليه وسلم لا يحل الكذب
الا في ثلاث تحدث الرجل امرأته ليرضيها والكذب في الحرب و في
الاصلاح بين الناس (ترمذى)

*Asma bint Yazeed narrates from the Prophet ﷺ that
"Lying is impermissible except in three matters- a man
lying to his wife in order to please her, in battles and
to make settlement between people". [Tirmizi]*

One can even find practical examples of the same in
Hadith literature:

When the Prophet ﷺ appointed Muhammad bin
Musalmah to assassinate Ka'ab bin Ashraf, he asked the
Prophet if he could speak a lie if there was a need to do so.
The Prophet permitted him to do so in very explicit words.

[Bukhari]

Hajjaj bin Alaas sought permission during the Khaibar
expedition to lie to the Makkan polytheists in order to
retrieve his belongings from them. The Prophet allowed
him to do so. [Ahmad, Nisai, Hakim, Ibn Hibban]

It is on the basis of these examples that the Jurists and
Hadith scholars have derived the following conclusions:

Allamah Ibn Hajar writes:

اتفقوا على جواز الكذب عند الاضطرار كما لو قصد ظالم قتل رجل
وهو مختف عنده فله ان ينفي كونه عنده و يحلف على ذلك ولا
يأثم (فتح الباري، ج ٥-ص ١٩٠)

*"It is the unanimous opinion of the scholars of Islam
that it is permissible to utter a lie when it becomes
absolutely necessary to do so. For instance, if a tyrant
seeks to murder a person and the latter has taken the
refuge of someone and hidden himself up, the host is
allowed to deny that he is present (in his house) and
even take an oath to that effect. He would not be held
accountable in such a case." [Fath alBari Vol 5, Page 19]*

Allamah ibn alQayyim cites the episode of Hajjaj bin Alaas to derive the following conclusion:

و منها جواز كذب الانسان على نفسه و على غيره اذا لم يتضمن ضرر ذلك الغير اذا كان يتوصل بالكذب الى حقه. (زاد المعاد، ج ٢، ص ٢٠٣)
"This leads us to conclude that it is permissible for a person to lie in his own regard or in someone else's regard if it does not harm anyone else and the person is able to acquire something that he is rightfully entitled to by speaking that lie."

[Zaad alMa'ad Vol 2, Page 203]

While deriving a principle from aHadith, Allamah Nawawi writes in Riyadh asSaliheen:

كل مقصود محمود يمكن تحصيله بغير الكذب يحرم الكذب فيه و ان لم يمكن تحصيله الا بالكذب جاز الكذب ثم ان كان تحصيل ذلك المقصود مباحا كان الكذب مباحا و ان كان واجبا كان الكذب واجبا. (باب تحريم الكذب)

"Speaking a lie to achieve anything that is good is impermissible if that thing can be achieved without resorting to a lie. However, it is permissible to lie if it cannot be achieved without resorting to it. Moreover, if the purpose that is sought to be achieved is desirable, lying for it is also desirable; if that thing happens to be mandatory, then lying for it also becomes mandatory."

[Chapter on Impermissibility of Lying]

If you pay attention, you would realize that it is the same rule that it being applied here- i.e. there is a value attached to speaking the truth and refraining from speaking lies. If something more valuable is getting harmed because of it, then this relatively less valuable thing can be, and in certain cases should be, sacrificed.

4. The intensity with which backbiting is disdained is evident from the 12th ayat of Surah alHujurat in which it has been written, *"ايها الذين آمنوا ان ياتكم اخبر نبيا*

like to eat the flesh of his dead brother?" But who is unaware of the fact that Hadith scholars have commented upon the character of thousands of narrators while investigating into the veracity of the narrations and all this essentially comes under the ambit of backbiting. Is there any argument to vindicate this paradox except that 'attributing a false statement to the Prophet ﷺ and the initiation of false things in the name of the Prophet was much greater an evil than backbiting, and hence resorting to this smaller evil to save ourselves from the greater evil was not only permissible but also mandatory upon us'? Similarly, if a respectable person is offering his daughter in marriage to a man or is getting engaged in a partnership with someone, and you are aware that the latter is an immoral and dishonest person, then revealing his immorality or dishonesty is not only permissible but incumbent upon you. This is because, the life of a clueless girl getting spoilt or an upright man falling into the trap of a fraudster is a greater evil than backbiting could ever be.

5. Stripping an unrelated woman of her clothes is absolutely impermissible in view of the explicit command of the Qur'an. Despite this, Hazrat Ali apprehends the woman whom Hatib bin Abi Balta'a had sent off to Makkah with a letter to disclose to the Makkans Prophet Muhammad's plan to conquer it and warns her that he would strip-search her to retrieve the letter if she does not hand it over to him. Ibn alQayyim has deduced from this episode that a woman can be disrobed during investigations if there is an expedient need to do so, for the greater good of Islam and the Muslims. [Zaad alMa'ad Vol 2, Page 239]
6. The importance of prayer (*salaat*) in Islam does not stand in need of any elaboration. But there is a Hadith that has been recorded by both Bukhari and Muslim

that the Prophet ﷺ went to settle a dispute that had erupted within the clan of Bani Umro bin Auf and he kept himself busy with the settlement of the issue even when it was time for prayer. The prayer eventually came to be led by Hazrat Abu Bakr Siddiq and the Prophet ﷺ joined the congregation later.

7. Disowning evil is an essential part of Shariah. We are all aware of the directive guidelines laid out by God and His Messenger in this regard. However, if disowning a smaller evil seems to open up the floodgates to a greater evil, it is better to refrain from disowning it. It is for this purpose that the Prophet ﷺ refused to act against the corrupt and immoral community leaders and instead commanded that 'If a person does not approve of anything concerning his leader, he should bear it with patience and should not absolve himself of his obedience'.
8. The importance of law enforcement in Islam cannot be overemphasized. However, the Prophet ﷺ had instructed that if a person is caught for theft in a state of war, his hand should not be severed [Abu Dawood]. Caliph Umar had also issued a command that no Muslim should be punished while the Muslim army is fighting an enemy in their territory. It was feared that this could rouse (tribal and other) ignorant prejudices in a soldier, making him ally with the enemy.

[A'alam alMuqieen Vol 3, Pages 29-33]

It is not only during a battle that this exception is applied. In the case involving slander against Lady Aishah, although the Prophet punished three sincere Muslims on the charge of falsely accusing her of adultery, he let off Abdullah bin Ubayy, the Chief of the Hypocrites. While listing down the reasons for doing so, Ibn alQayyim also mentions that 'The Prophet refused to sentence him to punishment in view of an expediency that was far more important than

enforcing the law'. This was the same expediency that had prevented the Prophet from punishing him on many previous occasions despite the fact that his hypocrisy has stood exposed and he had committed many such crimes that made him deserving of capital punishment. The reason for this was that Abdullah bin Ubayy was an influential person of his tribe and he had a devoted following. It was feared that punishing him would lead to riots and chaos. Hence, the Prophet preferred to win over the hearts of his tribesmen instead of punishing him and instigating them to revolt against Islam. [Zaad alMa'ad Vol 2, Page 161]

9. The spoils of war should be equally distributed among all the participants as they all have equal rights over them. The Shariah is very explicit in this regard and this is also the requirement of justice. However, when the spoils obtained from the Battle of Awtas were distributed, the Prophet offered a lion's share to the Quraish and certain other tribes to win their hearts over, depriving the Ansar of all spoils. When the Ansar protested against this inequitable distribution, the Prophet justified his decision by explaining that since it was important to win over the hearts of those people, the goods of this world have been offered to them. He further added, *لا ترضون يا معشر الانصار ان ينهب الناس بالشاة والبعير و ترجعون برسول الله الى رجالكم* "O Ansar, are you not satisfied that the people should take away camels and goats, while you take to your home the Messenger of God?"

These examples make it amply clear that all the principles and commands of *deen* are not equal in value and importance; there is a difference in their respective status. They also tell us that not every rule of *deen* is rigid; there is scope of adopting flexibility with many of its rules. The underlying principle in this regard is that if a small virtuous deed would lead to a great sin, then it should be avoided.

Similarly, if a small evil becomes imperative to attain a greater virtue or achieve a greater requirement of deen then it is better to adopt it. Also, if it becomes necessary to opt between two evils, the lesser evil should be resorted to. Another thing that we can learn from these examples is the standard that is employed while making a distinction in the status of the various values enshrined in the Shariah system- what are the kind of things on which other things have been given priority and which are those values that are insurmountable and cannot be compromised upon. Whatever I had written in the articles under question was based on these very points. I stand absolved of whatever has been said about me- giving an altogether different meaning to my words and then declaring it to be my stand and thus levelling dirty allegations against me. They are accountable before God for whatever they have said in my regard.

As for the controversy over my interpretation of *alAimatu min Quraish* (The Imam should be from the Quraish), all I would like to say is that whatever I have mentioned in brief¹ in the December 1956 issue of *Tarjumanul Qur'an* had already been explained in detail in the April 1946 issue of *Tarjumanul Qur'an*, and it had also been included in the first volume of my book, *Rasail wa Masail* as early as 1951. But never before have so many controversial points been unearthed, as they are now being suddenly discovered from this relatively shorter version. What is the motive behind all this? The Knower of the apparent and hidden knows best, and that is more than enough.

Nevertheless, it is very important for every student to know the answers to some pertinent questions. Is there any disagreement over the authenticity of the aHadith, on the basis of which the Quraish were preferred for the Caliphate

¹ Kindly refer to *Rasail wa Masail* Vol 4, Chapter: Islamic Movement.

after the demise of the Prophet ﷺ? And does anyone deny the fact that it is on the basis of these aHadith that the members of the Quraish came to be preferred for the post of Caliph for many consecutive centuries- right from the episode of Saqifah bani Sa'adah? Is there any doubt that for quite a long time in history the jurists of Islam were of the opinion that being a Qureshi was an eligibility criterion for someone to be nominated as Caliph?... Or is it that these allegations, that have been levelled against me by the objectors and cited by the questioner in his letter, have been made after having accepted and acknowledged the authenticity of these aHadith and historical facts?

If the former is true, then there should be a critical academic analysis of these aHadith and historical incidents so that ignorant people like me could benefit from their knowledge and research. And if the latter is true, then they need to reassess whom they are actually targeting and whose name is being maligned in the course of venting out their hatred against me.

There is one more point worth noting in this regard. The beginning of this debate can be traced back to the policy that Jama'at-e-Islami Qad announced at the time of the 1950-51 elections. The policy said that since candidature and canvassing is forbidden in Islam, neither would we present ourselves as a candidate nor would we cast our vote in favour of any candidate. Later, we learnt from our experiences that as of now we are not in a position to nominate a suitable person who meets our standards for each and every seat across the country in its general and local elections.

There are three kinds of people who generally enter the field in such a situation:

- Those who are against the Islamic system altogether and aspire to make Pakistan a secular state.
- Those who do not oppose the Islamic system per se, but can hardly be regarded as sincere towards its

establishment. Moreover, they are not reliable enough as far as their deeds are concerned.

- Those who are neither tainted, nor can their sincerity towards the formation of an Islamic state be brought into question.

But the element of 'candidature and canvassing' can be found in all of them. For, this is the system that has been in vogue in our country all these years and even our religious leaders see no harm in filing nominations papers as candidates. What is more, the vast majority of religious scholars are even sceptical of the juristic impermissibility of such a candidature. Now, if we were to insist upon treating all these three kinds of candidates equally and refrain from casting our vote for any of these, it would only mean that we would facilitate the victories of the first two kinds of people and our support to the third kind of people in their efforts to establish the Islamic system would also stand undermined. This way, in an attempt to reform a relatively smaller and secondary thing (impermissibility of candidature) we would be guilty of harming a much more important thing (establishment of the Islamic system in the entire country). It should be understood that Islam attaches prime importance to the establishment of the Islamic system and not the reformation of the electoral process. Once the Islamic system is established, we can proceed with the reformation of the electoral process along with many other reformations. It is on this basis that we have amended our previous policy, which now states that while we would not field candidates for elections ourselves, but in order to thwart the evil of corrupt elements and to promote those elements that are relatively righteous and supportive of the Islamic system, we would certainly vote for and campaign for those candidates supporting whom seems imperative for this cause. Every sensible person, who goes through the elucidation of Islamic injunctions that I have presented above, would readily agree that our amended policy is in complete accordance with that very

spirit and that no principle of Islam has been dishonoured or transgressed upon while doing so. Despite this, we were bombarded with allegations that 'you have stooped to the level of breaking your own principles in order to pursue your lusts and desires' and 'only thing that matters to you now is power and authority, for which you would go to any length'. God alone knows whether all this is being said out of lack of knowledge and ignorance or they have some other objectives before them.

Tarjumanul Qur'an

Shaban 1377 AH/ May 1957

The Status of Diplomacy in Deen

The following discussion is part of a series of debates raging between the author and his dissenters.

In a letter, a person writes to the author:

"A lengthy article on 'The Status of Diplomacy in Deen' is being published in the Lucknow-based magazine alFurqan, the final instalment of which has been published in its latest issue. I am not sure whether you have gone through this article or not, but I would like to bring your attention to a couple of points in this regard.

Although I do not agree with many of the points mentioned therein, the critiques written on 'Aimmatun min Quraish' and on the article, 'Are all the principles of deen inflexible?' that was published in Tarjumanul Qur'an this May are worth a read. The learned writer has tried to prove that the examples you have cited come under the ambit of individual permissions, temporary allowances and exceptional cases, and that they have got nothing to do with the struggle of establishing deen.

There is one more thing about this article that I concur with. While the fact remains that you have spoken about diplomacy in relation with certain secondary issues like 'candidature system' and the need to cooperate with other organizations, the manner in which you have sought to back them up with prophetic examples (which the writer feels are all irrelevant) can equip the irresponsible and avaricious class of people with an opportunity to make alterations in deen, which would in turn open up the doors to untold miseries. As a vindication to his apprehensions, the writer has cited

a practical example from alMuneer that deals with the 'Purchase of Votes', in which a person had written to the editor of alMuneer that, "Since the Prophet used to purchase the faiths of certain people under the provision of 'winning their hearts over to Islam', purchasing votes in order to establish the Islamic system also stands justified". He had also written that if he would have been in possession of a huge treasure, he would have purchased the votes of the entire electorate and tried to establish Islamic rule by these means. The learned writer argues that if your article on diplomacy can influence people to fall to such levels, it is not at all inconceivable that in the near future they would interpret this philosophy in many other ways to overturn a number of essential values of Islam.

You claim that in the struggle for establishment of deen- with the exception of a few essential principles like monotheism and prophethood- the other relatively less important principles can be overlooked if required, especially when insisting upon them can harm other much more important principles. Your dissenters have contended that if deen is to be established, it should necessarily be established with all its principles intact. If any such struggle calls for the sacrifice of any of these principles, it does not deserve to be called 'struggle for establishment of deen'. And if such a 'struggle does succeed, it would result in the establishment of a self-conceptualized system instead of an Islamic system. And if the situation is so desperate, then those enthusiastic about establishing deen should either insist upon establishing deen along with all its component principles or give up this struggle itself. In effect, the writer of this article argues that while there can be a window for exceptions in Islamic injunctions for individual emergencies and personal expediencies, there is no question of allowing

any compromise as far as objectives and expediencies related to deen are concerned.

Since this matter pertains to the fundamental issue of 'the call towards deen and its methodology', many people- who are neither blind supporters of the Jama'at nor its adversaries- would like to understand this issue in all earnest. The replies that you have furnished in your December and May issues of Tarjumanul Qur'an under Rasail wa Masail are not convincing enough. Hence, I would request you to kindly publish a detailed article that is based on the Qur'an, the Hadith and the example of the Companions and which deals exclusively with the struggle for establishment of deen. This would not only help in clearing many a misunderstanding, it would also quell the anxiety of many concerned people. There would be a lot of value attached to such an article, not only from the Jama'ati perspective but from a purely academic perspective as well."

The Author's Reply

The time and context in which the *alFurqan* article has been written and the tone and tenor it employs clearly betrays the fact that the article has been written not to discuss this issue per se, but to vent out the long-suppressed bile that has been accumulating within them since many years; these issues are being used only as a pretext to have them released. If a man makes a firm resolution to defame a person, then there is no person in this world who can be spared of his vile attacks. You can take the name any past or present author for that matter; I would demonstrate to you that if a person is bent upon defaming him, it is possible to unearth the most objectionable material from his works. Let alone others, had it not been for the fear of God and the risk of being accountable before Him for each and every word, I would have shown you how easy it is to prove that it is these very people who are themselves astray

and are also leading others astray and how they are the biggest threat to *deen* and Muslims and how any person can project himself as pious and righteous and fabricate lies and slanderous comments against them.

My standard approach towards such ill-intentioned criticisms is to refrain from responding to them. As for them, they would keep seeking new avenues to meet their objective, but how am I supposed to abandon my own mission and run in their pursuit? Moreover, if I spend all my time in arguing with such people I would have no time left to do any other work. You might have noticed that there are certain people who have been relentlessly attacking me for the past fifteen to sixteen years; and there is a segment that seems to have dedicated itself to criticizing me in the last couple of years. But I have never replied to any of their allegations. At the most, all that I have done is clarified my own position and left them to spoil their book of deeds for as long as they want.

It would turn out to be very difficult for me if you keep getting misled by the articles of *alFurqan* and *alMuneer*; they would sow new doubts in your mind every other day and I would be expected to leave off all my work to dispel your misunderstandings. It would be far better if you patiently keep studying the literature coming from both sides. If the truth dawns upon you- good enough; if not, then you would simply add to the headcount of those who have already fallen prey to propaganda and misgivings.

Nevertheless, since this is the first time you have written to me about the propaganda they are spreading, I shall oblige you with a few clarifications that would help you in understanding this issue.

1. It has been contended that the examples that I have furnished to clarify my stand on allowances provide justification for only those allowances that can be provided in emergency conditions at the personal and individual level, and that this rule just cannot be applied

to matters dealing with the establishment of *deen*. But if this alone is the bone of contention, then please tell me which individual emergency condition allowed the Hadith scholars to backbite upon thousands of living and dead narrators while investigating the Hadith narrations? Let alone other examples for the moment, this particular example is quite sufficient to prove that adopting relatively smaller but necessary evils in order to save ourselves from a greater evil, and tolerating the loss of smaller virtues to a reasonable extent for the sake of a greater good is permissible not only in the case of individual necessities but in the case of purely *deeni* expediencies as well. It also proves that the distinction that the writer has tried to make between the necessities of the individual and those of the struggle for establishment of *deen* while applying this rule is absolutely invalid. It is but obvious that it was not for the sake of professional requirements or to meet the demand of their literary work that the Hadith scholars had laid bare the weaknesses of thousands of narrators. They have engaged in this explicitly impermissible and, as the Qur'an puts it, absolutely despicable act relying only upon the argument that if they do not commit this wrong it would lead to a much bigger wrong- many such things would find their way into *deen*, ostensibly in the name of the Prophet, that the Prophet ﷺ had never actually commanded us to do, and resultantly corrupt the *deen* itself. Who can deny that this act of theirs was an absolutely important and exemplary step that was carried out purely in the cause of 'Establishment of *deen*'? There is not even a hint of any personal or individual necessity in this case. And this is such an act that it has been performed by the Jurists and Hadith scholars of every generation without having any guilt attached to it. On the contrary, they- and the entire Ummah for that matter- have been unanimous in regarding it as a virtuous act deserving of divine

rewards, despite the fact that it does- at the end of the day- come under the purview of backbiting.

2. The apprehension that conveying an injunction of *deen* could result in its misuse by greedy opportunists seems quite reasonable at first sight. But just think over it, have God and the Prophet and the religious scholars of this Ummah ever shied away from conveying an important injunction of *deen* for fear of it being misused? The Qur'an, the Hadith and the books written by Jurists contain many such things that can very well be misused by an insensible and wicked person to cross all imaginable limits of chaos, ignorance and corruption. However, despite these inherent risks being involved, God or His Messenger or the Jurists have never refrained from proclaiming anything that is essentially true and which serves as a necessary guidance for those who are sincerely interested in following the *deen*. Now, if the things that I have written in the article under question are indeed true and point towards a rule that actually does exist in *deen*, then it is for you to decide the validity of the objections that have been raised. What reply do you then expect me to give these people who are trying to chastise me for touching upon a genuine topic, alleging that doing so would supposedly 'open up the doors to untold miseries'? Why, going a step further, they are even trying to brainwash people into believing that I am myself opening up these doors to allow for corruption to seep in and serving the evil under the pretext of serving *deen*. The only response to such propaganda would be to patiently continue with my mission and leave these people to say whatever they would like to.
3. The purpose of citing the article on 'Purchase of Votes', that was published in *alMuneer*, by *alFurqan* is to substantiate the idea that the doors to misery that they were so apprehensive about have already been flung open... and by none other than me. These acrobatics,

which are being displayed with a commendable sense of piety, can only be endured with patience. For, the spirit underlying these blame-games and these passionate attempts at deriding the other party is so unnerving that I keep praying to God to save me from falling prey to these unholy indulgences. Alas! Simpletons like you do not even allow a person to endure all this with a dignified silence and insist upon a reply to these allegations. I leave it to you to determine the truth behind this matter and suggest what reply I should give to these charges.

To begin with, *alMuneer* levelled a false allegation against me that I consider it permissible to purchase votes and that I include it under the category of *muallafatil quloob* (winning over hearts to Islam), despite the fact that there is not even an iota of truth to this allegation. Far from uttering such a blasphemy, this sacrilegious thought had never even crossed my mind. I had never even imagined that I can possibly be accused of such a thing before I came to read it in *alMuneer*. Then, *alMuneer* published a letter written by some person in which he has argued in favour of purchasing votes on the basis of his own limited understanding. This is the person's own doing; I have never spoken to that person or any other person on this topic. I have got absolutely nothing to do with his ideas and interpretations. Now, the editor of *alFurqan* is holding me accountable for all this and conveying an impression that: 'Look, this shows how people are getting influenced by this person's ideas and holding all moral values to ransom'. The question that needs to be asked is when and where have I said or written that it is permissible to purchase votes? This was a clear case of libel that the editor of *alMuneer* was guilty of. Giving in to his thirst for vengeance, the editor had fabricated this false charge and published it to defame me. Leaping into the fray, if an unrelated third person

expresses his opinion on this false attribution, am I expected to furnish a response here as well? Does the fact, that while expressing his opinion this person had written a few words praising me, provide sufficient grounds to hold me responsible for every word that he speaks? If this pattern of accountability comes to be adopted, not a single religious scholar or elder or sage would be spared from being branded the source of all misguidance by attributing to him the errors committed by his disciples. I'm pretty sure even the prosecuting inspectors of today's wayward governments do not exhibit such tact and effort in their attempts to prove someone liable.

4. Had you gone through the details of '*alAimmatu min Quraish*' that I have discussed in the first volume of '*Rasail wa Masail*', you would probably not have fallen for the objections raised by *alFurqan*. Just think over it, there has to be some element of truth in that Hadith that compelled the jurists- right from the first century to the era of Shah Waliullah- to regard Quraishi lineage as an eligibility factor for the post of Caliph, right? If the import of the Prophet's statement was anything other than what is apparent thereof (that after him, the Caliphate should be entrusted to the people of the Quraish tribe), then were the Jurists so naive to mistake a prophecy for a command? Did it not occur to anyone in all these previous centuries that these are mere predictions, that the meaning of such statements is not at all an instruction to have the Caliph from the Quraish?

Is '*alAimmatu min Quraish*' a prediction or an instruction? Let us see what Shah Waliullah has to say in this regard:

"It is among the prerequisites for the post of Caliph that he (the Caliph) should belong to the Quraish tribe. This is because Hazrat Abu Bakr Siddiq had asked the Ansar to refrain from claiming the

Caliphate on the basis of this Hadith in which the Prophet had exclaimed: *alAimmatu min Quraish*.”

What does this tell you? What does Shah Waliullah understand by this Hadith? That ‘the Caliphs would be from the Quraish’ or that ‘the Caliphs should be from the Quraish’? Even if, for the sake of argument, this Hadith (and other similar aHadith) are taken as a prophecy, then it should be known that the Jurists and Hadith scholars have all regarded this prophecy as an instruction.

While commenting on Bukhari’s Hadith, *‘la yazalu hazal amru fi Quraish’* Allamah Qurtubi writes, “This Hadith informs us about legal permissibility, that the supreme leadership would not be established but for a Quraishi”.

Ibn Muneer avers, “The element of leadership is exclusive for the Quraish. In other words, what the Prophet meant to convey was: *‘La amrun illa fi Quraish’* and this is similar to the Prophet’s statement: *ashShuf’atu fi ma lam yuqsim*”.

Allamah Ibn Hajar writes, “Although the wordings of this Hadith are in the manner of a prophecy, its meaning is indicative of an instruction. It means that the Prophet had meant to say: ‘Appoint an Imam exclusively from the Quraish’. The other narrations of this Hadith also support this very meaning and the Companions were also unanimous in treating this as an obligatory restraining factor, contrary to those who have rejected this interpretation. The majority of religious scholars have opined in favour of the rule that being a Quraishi is a necessary condition for being an Imam.” [Fath alBari. Vol 13, Pages 96-97]

Nevertheless, this opinion of the respectable scholars was not only based upon those aHadith that are in the language and form of a prediction or

which have a probability of being a prediction. There are numerous aHadith that are in the imperative as well. For example, '*Qaddimu Quraishan wa la taqaddamuha*' which translates as 'Make the Quraish lead you; do not lead them' [Bayhaqi, Tabarani, Shafi'i] and '*Quraish qaadatun-naas*' which means 'The Quraish are the leaders of the people' [narrated by Imam Ahmad on the authority of Amr bin Aas].

In fact, the collective effect of all the statements that have been narrated from the Prophet ﷺ in this regard was that the Islamic scholars have been unanimously regarding Quraishi lineage as a legal prerequisite for the post of the Caliph all these centuries. None other than the Khawarij and the Mu'tazilah have opposed this stand. Qazi Ayaz has even claimed that there is a consensus of the Ummah over this issue. He says,

"It is the creed of all religious scholars that being a Quraishi is a precondition to being an Imam. They have included it under those issues that enjoy a consensus. None of the elders have expressed dissent from this opinion, nor have any of the contemporary scholars disagreed with it."

[Fath alBari, ibid]

It is quite unfortunate that this malaise has now even affected schools, where students are blatantly being taught that this is merely a prophecy, not a command. As if ignorance was so widespread in the preceding centuries that no one could distinguish between a prediction and a command; they all mistook it to be a command and continued with this mistake all these years! Ironically, it is these same people who are audacious enough to level accusations against others that their writings are leading to a decline in the faith and respect that

people once had for the elders and that the masses are falling prey to misconceptions that the *deen* had never been correctly understood hitherto!

I have already clarified my stand in this regard in *Rasail wa Masail* and it still remains the same. I have not come across any academic discourse all these years that would compel me to reassess my stand. It is an established fact, as far as I'm concerned, that the Prophet ﷺ had issued instructions to grant the post of Caliph to a member of the Quraish tribe. This was definitely his command, not merely a prophecy. But the reason behind issuing this command was not that the Caliphate was the legal right of a particular tribe, effectively disqualifying all other tribes and races from holding this supreme post. Rather, the actual reason behind issuing this command was that the political environment at that time (following the demise of the Prophet ﷺ) was such that only the leadership of the Quraish could have been viable. The Prophet has himself dwelt into the wisdom behind it in a number of statements. Accordingly, he issued a command that the Caliphate should be entrusted to the Quraish to safeguard the Islamic government from undue difficulties. The Prophet knew that if the Muslims were to nominate a non-Quraishi person as Caliph just to display the Islamic value of equality, they would have to face the consequences of preferring a person from a tribe that has a relatively less or no influence as compared to a much more influential one.

The Jurists adopted this command as a permanent constitutional legal clause, and for good reason. For, even after the passage of several centuries following the Prophet's era, the Quraish maintained their dominant position in society, because of which this

command was originally issued. Thus, generation after generation, the Jurists kept proclaiming this statement- that the Caliph should be from the Quraish- as a constitutional rule. Having said that, it was always clear that this command was not issued because of some particular tribal distinction of the Quraish per se; rather, it was because of some qualities that the Quraish possessed and that the command would remain valid till the Quraish remain deserving of this post. For instance, the Prophet had added, "as long as they keep the *deen* established" and "as long as they uphold justice and are true to their promises and are kind to the people". These statements bore testimony to the fact that Quraishi lineage is not a permanent and constitutional requirement for the post of Caliph. Abu Bakr Siddiq had elucidated this point at Saqeefah Bani Sa'adah when he said, "This leadership would remain with the Quraish as long as they obey God and scrupulously follow His injunctions". Umar Farooq's statement that "If Abu Ubaidah is not alive at the time of my death, I would make Ma'az bin Jabal ¹ the Caliph" underlines the fact that the Caliphate is not the birthright of the Quraish.

Tarjumanul Qur'an

¹ It should be noted that while Abu Ubaidah bin Jarrah belonged to the Quraish, Ma'az bin Jabal did not. He was from the Ansar of Madinah... Translator

Backbiting and its Injunctions

I have received some elaborate questions in which the writers have cited the objections of certain people and asked me to furnish replies. While I am not at all interested in making enemies at a personal level, but when personal grudges and spite take the form of irresponsible remarks on Islamic injunctions it becomes necessary to correct them, so that the common folk, those who have not received any formal education in this stream, should not have any misgivings in this regard. Hence, I am enlisting the relevant points of contention from all those letters and replying to the same.

The questions related to Backbiting are:

1. *What is the correct definition of Gheebat (Backbiting)?*
2. *How appropriate is the following definition of backbiting: 'A person discusses the genuine flaw of another person in his absence to deride and insult him, and also wishes that that person should not come to know about it'?*

It should be known that this definition has been cited with the claim that 'The definition of backbiting that has been attributed to the Prophet ﷺ in Hadith literature is too ambiguous, because of which a person might find it difficult to ascertain the exact premises of backbiting' and that the definition offered by the Prophet is 'not the complete and appropriate definition' of backbiting.

3. *Which are those forms of backbiting that the Shariah has permitted? And why is that so? Is it because they do not fall under the purview of backbiting at all, or is it*

because an absolute need has made an impermissible thing permissible?

4. *Is it true that the Hadith scholars have commented upon the narrators on the basis of this ayat of the Qur'an:*

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا (البحر: ٦)

"O you who have believed, if there comes to you a disobedient one with information, investigate"?

5. *What do the Hadith scholars have to say about this act of theirs?*

The definition of *Gheebat* that has been offered by the Prophet:

The reply to the first question is that the definition of *gheebat* (backbiting) is the same that the Prophet has himself stated. Muslim, Abu Dawood and Tirmizi have recorded a Hadith on the authority of Abu Hurairah (God be pleased with him) that the Prophet ﷺ said:

ذَكَرَكَ أَخَاكَ بِمَا يَكْرَهُ، قِيلَ أَفَرَأَيْتَ إِنْ كَانَ فِي أَخِي مَا أَقُولُ، قَالَ إِنْ كَانَ فِيهِ مَا تَقُولُ فَقَدْ اغْتَبْتَهُ وَإِنْ لَمْ يَكُنْ فِيهِ مَا تَقُولُ فَقَدْ بَهْتَهُ.

'Gheebat is saying something about your brother that he dislikes.' The Prophet was asked, 'What if what I say about my brother is true?' He said, "If what you say is true then you have backbitten about him, and if it is not true, then you have slandered him."

Imam Malik has included a similar Hadith in Muwatta wherein Mutallib bin Abdullah narrates that:

إِنْ رَجُلًا سَأَلَ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَا الْغِيبَةُ فَقَالَ إِنْ تَذَكَّرْتَ مِنَ الْمَرْءِ مَا يَكْرَهُ إِنْ يَسْمَعُ- قَالَ يَا رَسُولَ اللَّهِ وَإِنْ كَانَ حَقًّا، قَالَ إِذَا قُلْتَ بِاطْلًا فَذَلِكَ الْبَهْتَانُ-

A person asked the Prophet ﷺ, "What is *gheebat*?" He replied, "That you speak about someone in such a manner

that would offend him if he hears it¹". He asked, "O Messenger of God, even if what I say is true?" The Prophet explained, "If what you say is false it becomes a slander".

The Legal Interpretation of Gheebat:

In light of this Prophetic definition, the leading religious scholars have interpreted *gheebat* or backbiting as: "*Gheebat* is to speak ill about a person in his absence"

Imam Ghazali says:

حد الغيبة ان تذكر اخاك بما يكرهه لو بلغه

"Gheebat is defined as: You speak about your brother in such a manner that if it comes to his knowledge he would feel offended".

In the renowned dictionary of Hadith, Nihayah, Ibn Atheer has defined *Gheebat* as:

ان تذكر الانسان في غيبة بسوء وان كان فيه

"That you speak ill of a person behind his back, even if it is true".

Imam Nawawi defines it as:

كر المرء بما يكرهه سواء ذكرته باللفظ او بالاشارة والرمز

To speak explicitly or implicitly about a person in such a manner that would offend him.

Raghib Asfahani writes:

هي ان يذكر الانسان عيب غيره من غير محوج الى ذكر ذلك

Gheebat is to expose the flaw of a person, without this act of his serving any benefit whatsoever.

¹ Let no one be mistaken that since there is no mention of 'behind one's back' in this Hadith, speaking ill about someone in front of his face would also amount to *gheebat*. The word *gheebat* itself conveys the meaning of 'behind one's back'. Hence, whenever something is said as a definition of *gheebat*, it would by itself include the meaning of 'behind one's back' irrespective of whether this has been explicitly mentioned or not.

Badruddin Aini, while commenting upon Sahih Bukhari, says:

الغيبة ان يتكلم خلف انسان بما يغمه لو سمعه وكان صدقا اما اذا كان كذبا فيسمى بهتانا

"Geebat is to speak something about a person behind his back that would hurt him if he were to listen to it, and whatever has been spoken happens to be true. If it is false, it would be regarded as a slander".

Ibn atTeen writes,

الغيبة ذكر المرء بما يكرمه بظهر الغيب

"Geebat refers to speaking about a person behind his back in such a manner that would offend him".

Karmani defines Gheebat as:

الغيبة ان تتكلم خلف الانسان بما يكرمه لو سمعه ولو كان صدقا

To say something about a person behind his back that would hurt him if he were to hear it, even if whatever has been said is true.

Ibn Hajar writes this about Gheebat and Nameemah (malicious gossip):

الغيبة توجد في بعض صور النميمة وهو ان يذكره في غيبة بما فيه مما يسوئه قاصداً بذلك الافساد

There are certain forms of gossip that include backbiting. This is when a person gossips about those flaws of a person that are actually present in him and would offend him. The person does so with a malicious intent.

None of these scholars of jurisprudence, lexicology and Hadith have been audacious enough to declare the definition offered by the Prophet as inadequate and put forth their own definition instead. Who other than the lawgiver can be better placed at defining a terminology used in the law? Since the lawgiver has already equipped us with a clear reply to a clear question, we as Muslims are

expected to accept it as true and appropriate. Let alone a Muslim, even a right-minded non-Muslim would never insist that the appropriate definition of a terminology used in law is not the definition that has been provided by the law-giver himself, but one that he is providing them with. This is as ridiculous as a legislative council defining a certain terminology used in the law that has been tabled by them and an overenthusiastic person were to contend that the actual definition of the terminology used in this law is not that which has been provided by the legislature, but the one that he is providing them with.

The defects in the definition proposed by the dissenters

The reply to the second question is that the definition of *gheebat* that you have proposed is neither complete nor appropriate. Your definition, 'A person discusses the genuine flaw of another person in his absence to deride and insult him, and also wishes that that person should not come to know about it', includes even those forms of backbiting that are unanimously considered permissible and excludes some other forms of backbiting that are unanimously held to be impermissible. For instance, a person sends a marriage proposal to someone. You are aware of the fact that he is an immoral person. You approach the girl's father and inform him about that person. Your intention behind doing so is to create a negative image of that person in the mind of the girl's father so that he would not take him as his son-in-law. You also request the girl's father not to reveal to that person that you have spoken ill about him. Although this act has been allowed in Islamic law in view of its obvious necessity, it completely comes under the ambit of 'convictable backbiting' if your definition is adopted. This is because it includes both- the intention to deride the person and to keep it hidden. On the other hand, we have a person who shares the flaws of certain people with his friends only in jest, for some light-hearted gossip. His intention is not to deride those people

(even if they might indeed lose prestige in the eyes of his audience). Moreover, it makes no difference to him whether or not those people come to know about it. Although such an act is absolutely impermissible in Islamic law, it remains outside the purview of *gheebat* as far as your definition is concerned, because neither does it contain the intention to deride someone, nor does he try to or want to keep it hidden.

Not only that, even those things escape the premises of your definition that the lawgiver has himself explicitly declared as impermissible backbiting. It is mentioned in a Hadith that when Maiz bin Malik Aslami was stoned to death for having committed adultery, the Prophet ﷺ overheard two people conversing on the roadside. One among them said, "Look at him! God had kept his sin covered, but his conscience did not spare him until he met such an ignominious death". A few paces ahead, the Prophet saw the rotting carcass of a donkey. The Prophet called those two men and said, "Come and relish the meat of this donkey". They exclaimed, "O Messenger of God! Who would like to eat this meat?" The Prophet told them, "Just a while back, when you were deriding the honour of your brother, you were doing something far worse than eating the flesh of this donkey." [Abu Dawood]

In this Hadith, the lawgiver ﷺ has himself declared their act impermissible, despite the fact that it contains neither of those two conditions of impermissible backbiting that you have included in your definition. The conversation that is reproduced in the Hadith makes it amply clear that their intention was not to deride or insult the deceased; rather, their intention was to feel sorry for him that when God had anyway kept his sin covered, there was no need for him to keep insisting upon his confession and consequently meet this terrible fate. As for their desire to keep their conversation a secret, it does not apply here at

all; the person who was being spoken about had already left this world.

The factor that makes a forbidden and impermissible thing permissible

Before attempting a reply to the third question, I feel it is necessary for you to understand one thing very clearly. If those things that have been declared *mamnoo'* (forbidden) or *haram* (impermissible) in Islamic law become permissible in certain conditions, it is not because there occurs a change in their intrinsic nature. But it so happens because a greater expediency and necessity calls for its permissibility. It would have remained impermissible in the absence of that expediency or necessity. It becomes and remains permissible only till that expediency or necessity exists and for only the required measure. The moment that necessitating condition ceases to exist, those things regain their impermissibility. For example, God has forbidden dead meat, blood, pork, alcohol and the meat of those animals that are sacrificed in the name of a deity other than God. When one of these things are temporarily made permissible in order to save the life of a person, it is not because at that moment the dead meat does not remain dead meat, or the blood changes to something else, or the pork turns into mutton. The only reason for this permissibility is that the loss of a person's life is much more serious an affair than the use of those impermissible things. Whenever- and to whatever extent- the consumption of these things becomes necessary to avert this greater loss, eating them is rendered permissible, but only to that required extent and for that particular moment. But their inherent impermissibility makes it incumbent upon the person to use them only to the required extent and not an ounce more.

Now let us discuss the third question keeping in mind the above principle. As per the definition provided by the

Prophet ﷺ, speaking ill of a person in his absence is an evil thing to do, and a sin at that. This act can become permissible or become an act of virtue only if there is a genuine requirement that makes it imperative. This requirement *has* to be of such great magnitude that if it is left unfulfilled it would inevitably lead to an evil far worse than backbiting. The reason this act becomes permissible in such a condition is not because it is not backbiting per se or that it is not inherently impermissible. Rather, the only reason for its permissibility is a practical necessity that Islam considers much more important. In the absence of such an overriding necessity, backbiting would remain impermissible and Islamic law would never allow it without any valid reason whatsoever.

Grounds for exemption

The primary basis on which backbiting becomes permissible is derived from the following principle stated by the Prophet ﷺ himself:

عن سعيد بن زيد عن النبي صلى الله عليه وسلم، قال ان من اربى

الربا الاستطاعة في عرض المسلم بغير حق. (ابوداؤد، كتاب الادب)

Saeed bin Zaid (God be pleased with him) narrates from the Prophet ﷺ that: "The greatest form of injustice is to unjustly violate the dignity and honour of a Muslim." [Abu Dawood, Kitaab alAdab]

The caveat, 'unjustly' makes it clear that this act is permissible if done within the confines of justice. These confines of justice are evident from the practice and example of the Prophet:

A Bedouin joined a congregation to offer prayers behind the Prophet. Soon after the prayers, he walked away saying, "O God! Have mercy upon me and Muhammad ﷺ and do not include anyone else in this mercy". The Prophet told the Companions, "Who do you people think is more

ignorant, this person or his camel? Did you not hear what he was just saying?"[Abu Dawood]

The Prophet ﷺ was with Lady Aishah (God be pleased with her) at her quarters when a person sought permission to have a word with him. The Prophet told Lady Aishah that this person at the door is among the worst people of his tribe. He then went out and spoke to him very gently. When he returned home, Lady Aishah enquired from the Prophet why he had spoken so gently with him despite him being so bad a person. The Prophet explained, "On the Day of Judgment, the person holding the worst position before God would be one who would have been so rude that people, fearing his rudeness, would have avoided meeting him". [Bukhari and Muslim]

Fatimah bint Qais narrates that she was sent marriage proposals by Muawiyah and Abul Jaham. She spoke to the Prophet about this and sought his opinion. The Prophet told her, "Muawiyah is very poor and Abul Jaham beats his wives a lot". [Bukhari and Muslim]

Hind, the wife of Abu Sufiyan, approached the Prophet and complained to him, "Abu Sufiyan is a miser. He does not give me and my children enough money to meet our requirements". [Bukhari and Muslim]

Those conditions in which Backbiting is allowed:

It is from examples like these that the Jurists and Hadith scholars have derived the rule that the 'confines of justice' that provide grounds for making backbiting permissible are those absolute needs that cannot be left unfulfilled. On the basis of this rule, they enlist those cases in which backbiting can be done or should be done.

In his commentary on Saheeh Bukhari, Allamah Ibn Hajar has written:

"Scholars have averred that backbiting can be done in all those cases that are correct as per Islamic law and when this is the only way in which those can be

achieved. For example, protesting against injustice, to seek help to get rid of something wrong, to seek a ruling or edict on an Islamic issue, to seek justice from a court of law, to caution people against the evil of some person (this includes disclosing the flaws of Hadith narrators and witnesses), to make a ruler aware of the bad character of his subordinate officer, to speak the truth about someone to those who enquire about him/her in matters related to matrimonial and business alliances, to alert a student if he is seen frequenting an immoral and fraud person. Apart from these, it is permissible to speak ill of those who openly commit injustice, fraud and spread corruption."

[Fath alBari Vol 10 pg. 362]

In his commentary on Saheeh Muslim [Sharah Muslim, Chapter: Tehreem alGeebah] and in Riyadh asSaliheen, Imam Nawawi has elaborated upon this topic in the following words:

"Backbiting is permissible to achieve a purpose that is considered correct by Islamic law and it cannot be achieved if backbiting is not resorted to. There are six such purposes that have been enumerated by the respectable scholars. There is a consensus on almost all these points and they have been derived from renowned aHadith.

- a. *Appeal against injustice: It is permissible for a victim of injustice to approach the king, the magistrate or any other authorized person who has the power to grant him justice and complain to him that so-and-so person has treated me unfairly.*
- b. *To seek the help of a capable person in eliminating an evil or correcting a tyrant: For this purpose, one can inform that person that so-and-so man commits such an evil and can request him to stop him. The objective should necessarily be to correct an evil; otherwise it would be impermissible to do so.*

- c. *Istafta'*: For example, if a person approaches a mufti and tells him that so-and-so has been unfair to me or that my father or brother or husband is such-and-such and seeks a way of redress. Although it is better in such cases to conceal the identity of the person against whom the complaint is being made and ask the question in the third person instead, saying: what is the ruling about a person who does so-and-so, it is nonetheless permissible to name the person concerned just as Hind had taken Abu Sufiyan's name while complaining about him.
- d. To alert the Muslims against an impending evil: There can be many conditions under this category. For instance, pointing out the flaws of narrators, witnesses and writers. There is not only a consensus over its permissibility, it is also obligatory to do so to protect the Shariah from getting corrupted. In the same vein, if some person intends to marry someone or make someone his business partner or wishes to entrust something to someone or wants to purchase a house in someone's neighbourhood, it is permissible for him to seek an opinion from a third person. In such a situation, it is incumbent upon the person whose opinion is being sought to honestly reveal the flaws of the concerned person in right earnest. Similarly, if you notice that a student is seeking knowledge from an immoral or fraud person and you are concerned that it would harm him, it is obligatory upon you to give him good counsel. Again, if an officer is inept and corrupt, you can inform his superior about him so as to alert him.
- e. If a person openly indulges in corruption and vice, consumes alcohol or usurps people's property or is involved in a crime, it is permissible to speak about his evil openly.
- f. If a person is widely known by nicknames like shorty, squint or cripple, these words can be used for him as a mark of identity, but not to deride him. Such seemingly

derogatory nicknames should nevertheless be avoided wherever it is possible to identify that person without using these nicknames.

The statements of these two elders tell us two things. One, wherever backbiting has been declared permissible or obligatory, it is not so because these acts are not backbiting. Rather, it is the fulfilment of some explicit necessity and requirement of Shariah that makes this intrinsically impermissible act permissible or obligatory. Second, the scholars have not restricted the permissibility of backbiting to the cases that have been recorded in Hadith literature. Instead, they have derived certain general principles from those episodes and applied them to a number of practical cases that do not find mention in Sunnah and have vouched for allowances therein.

The basis on which the Hadith scholars have commented upon the narrators:

Now let us take up the fourth question. It is alleged that the Hadith scholars have relied upon the following ayat to investigate and comment upon the narrators:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِن جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا أَن تُصِيبُوا قَوْمًا بِجَهَالَةٍ
فَتُصِيبُوا عَلَى مَا فَعَلْتُمْ لَذِمِّينَ ① (الجمرات)

"O you who have believed, if there comes to you a disobedient one with information, investigate (whether the report is true or not), lest you harm a people out of ignorance and become, over what you have done, regretful."
[Surah alHujuraat ayat 6]

The import of this ayat is that, 'When a *fasiq* (disobedient/impious/wicked) person comes to you with a report, verify the report before acting upon it'. What the Hadith scholars, on the other hand, have done is, 'When a person comes to you with a report, verify the life and character of the reporter. If he happens to be impious, reject

his report and publicly proclaim that this person is impious and his reports are not to be accepted’.

Compare these two statements. Do you really feel that the import of both these statements is the same and that there is no difference between the two?

Actually, those who have derived this conclusion have failed to fathom the true nature of critical evaluation carried out by the Hadith scholars. One aspect of this work was to reject the reports brought by those people who were liars, impious or somehow unreliable. The second aspect was to alert the people, especially the students of Hadith, about such narrators by registering their flaws in their books so that future generations could also observe due caution. The aforementioned ayat at best furnishes arguments in support of the first aspect of their work, and it is precisely in favour of this aspect that Imam Muslim has sought vindication from this ayat in his preface. As for the second aspect, there is no explicit ayat or Hadith in its favour. Instead, it has been accepted to be an act of backbiting by all Hadith scholars and they have argued in favour of its permissibility and obligation by stating that if this is not done it would be impossible to protect the *deen* from the false narrations of liars, fabricators and weak narrators. You have already read the statements of Imam Nawawi and Ibn Hajar in this regard in the preceding pages. Let us dwell into some more details....

The clarifications offered by Hadith scholars:

The reply to the fifth question is that none of the Hadith scholars have stated that the second aspect of their work does not fall under the purview of backbiting, nor have they attempted to vindicate this act by citing any ayat or Hadith in their support. What they have said is that it is not only permissible but also an obligation to indulge in this backbiting in order to protect the *deen* from corruption and guard ordinary Muslims from the snare of unreliable

narrators. When this process of critical evaluation began, there was an uproar that this is nothing but an act of backbiting that has both the living and the dead as its victims. At this, the Hadith scholars have offered the following clarifications:

Muhammad bin Bandad says: I confessed to Imam Ahmad bin Hanbal that I feel at unease when I say that a certain narrator is weak and another is a liar. The Imam reassured me by saying, "If we both keep silent and tight-lipped, how would an innocent person differentiate between a false Hadith and a genuine one?"

Abdullah bin Ahmad bin Hanbal says that: Commenting upon the Hadith and the narrators, my father was saying that 'he is weak' and 'he is trustworthy'. Hearing this, Abu Turab Bakshi asked him not to speak ill about religious scholars behind their backs. At this, my father responded by saying, "I am being a well wisher, not a backbiter".

Abdullah bin Mubarak stated about a narrator that he narrates false aHadith. A person objected to this saying that you are indulging in backbiting. Ibn Mubarak replied, "Shut up. If we do not disclose these things, how would it be possible to differentiate between the right and the wrong?"

Yahya bin Saeed alQattan was asked, "Do you not feel scared that those people whose flaws you disclose would hold you accountable on the Day of Judgment?" He replied, "That would be far less a tragedy than the Prophet ﷺ holding me accountable for allowing a Hadith to get attributed to him despite being aware that it was a false one."

Shaibah bin alHijan was told, "You have insulted certain people by criticizing them. It would be better if you refrain from doing so." He replied, "Allow me to think over it this night, so that I might contemplate before my Creator whether it is permissible for me to abstain from it." The

next morning, he came out and said, "I pondered over this issue before by Creator. I have no option but to reveal the conditions of the narrators in the greater good of Islam and the people."

Abdul Rahman bin Mehdi says: I and Shaibah were walking down the road when we saw a person narrating a Hadith. Shaibah exclaimed, "I swear to God that this person is uttering a lie. I would have remained silent had it not been impermissible for me to do so."

A number of Shaibah's students relate that he used to claim that criticizing the narrators is 'backbiting in the cause of God' and 'backbiting for the sake of God'. Sufiyan bin Uyaiynah says that Shaibah used to often say, "Come, let us engage in some backbiting for the sake of God ﷻ". Abu Zaid Ansari says that when we met Shaibah one day he said, "Today is not the day to relate aHadith, today is the day to engage in backbiting. Come, let us speak ill about the liars."¹

In the preface of his *Saheeh* compilation, Imam Muslim has elaborated upon this critical evaluation. He says,

"The reason why the scholars have shouldered the responsibility of disclosing the flaws of Hadith narrators and reporters and defended this act in front of accusers is that refraining from doing so would have led to untold disaster. All the reports pertaining to deen made some things permissible and others impermissible, commanded something or forbade something, encouraged something and warned against something. Now, if the narrator of a certain report happens to be a fraud and unreliable person, and a complier who knows about him were to include his report in his compilation without informing his audience about that person's flaws, then the compiler

¹ All these episodes and statements have been recorded by Khateeb Baghdadi in *alKafayah fi Ilm alRiwayah*. Please refer pages 43-46

would be guilty of misleading the Muslims by being silent on this matter. In such a case, it is most likely that a person who hears these reports would act in accordance with them, despite the fact that all or most of these reports are actually false and fabricated ones."

This is the argument put forward by this respectable and revered Hadith scholar with regards disclosing the flaws of the narrators. While commenting upon this compilation, Imam Nawawi writes in *Sharah Muslim*, Chapter- *Bayan allsnaad min adDeen*:

"Understand this very clearly that criticizing the narrators is unanimously considered permissible and even obligatory. This is because preserving the Shariah necessitates this act. This act is not an impermissible form of backbiting; rather, it is an act that is done in right earnest for the sake of God ﷻ, the Prophet ﷺ and the Muslims. The virtuous elders and the pious and God-fearing among their followers used to engage in this act."

Tarjumanul Qur'an

June 1959 CE

Backbiting: A Decisive Argument

Commenting upon my previous essay on Backbiting, a person had written to me that:

"Your article on 'Backbiting and its injunctions' that was published in the June 1959 issue of Tarjumanul Qur'an was quite satisfactory. However, they were followed up with some more discussions that have given way to fresh confusion. Can you not give a final and decisive statement on this issue that makes the Islamic position on backbiting as clear as black and white?"

Reply

It was with great reluctance that I had replied to some questions on this topic in the previous article. Now, I am being asked to further elaborate upon this matter. I would now, with the same reluctance, reply to two more questions in this article and close this topic once and for all. The pathetic level to which the people have descended during the course of this discussion is evident to each of us. But it is difficult for a decent person to avoid such debates, especially for the sake of clearing misunderstandings from people's minds.

The basic difference between the definition of *Gheebat* provided by the dissenters and that provided by the Prophet and its consequences:

Please go through the definition of *Gheebat* (backbiting) that I had reproduced in the June issue from authentic aHadith. You would at once realize that according to the Prophetic definition, *gheebat* refers to

speaking about the genuine flaws of a person behind his back. On the contrary, the definition provided by the dissenter ('A person discusses the genuine flaw of another person in his absence to deride and insult him, and also wishes that that person should not come to know about it') says that this ill-speech would be considered *gheebat* only when it is done with an intention to malign or insult someone and the person indulging in this ill-speech should desire that the person he is speaking about should not come to know about it. It is but obvious that unlike the definitions given by the other scholars, this definition is not an elaboration of the definition provided by the Prophet ﷺ. Instead, there is an obvious difference between the two which changes the definition of *gheebat* altogether.

First and foremost, the definition provided by the Prophet ﷺ makes it absolutely impermissible to speak ill about a person behind his back. It's a blanket rule. However, the definition provided by the dissenter limits it to only that ill-speech which is made with an intention to deride and insult someone and is done with an element of secrecy. This essentially renders all other forms of ill-speech permissible.

Secondly, the definition given by the Prophet provides the society with such a definite standard of backbiting that it allows each person to prevent and avert this menace in his surroundings. This is because wherever the two factors of 'ill-speech' and 'behind one's back' are seen together, the listener can be sure that the speaker is indulging in *gheebat*. The definition of the dissenter, on the other hand, makes the role of society utterly irrelevant. For, how can anyone ascertain the intention and desire of another person? The truth of these intangible factors is known either to the person involved in backbiting, or God, whose fear alone can prevent a man from backbiting. If this fear is absent, any person can evade the charge of backbiting by insisting

that he had no ill-intention or any desire to keep his act hidden! No one would then be able to hold him to account.

Third, after having declared 'speaking ill about someone behind his back' as impermissible-in-principle, the Prophet ﷺ has permitted backbiting in those cases where indulging in it becomes necessary to uphold justice. This includes those cases that fall under the purview of a valid and acceptable requirement of Shariah. On the contrary, the definition proposed by the dissenter makes one form of backbiting absolutely impermissible leaving no room for permissibility, while making another form of backbiting absolutely permissible irrespective of the need and purpose involved.

Fourth, the premises set by the Prophet make it possible for every person of society to judge whether a particular case of backbiting falls under the ambit of permissible backbiting or not. This is so because a valid Islamic requirement or objective is something that can be easily evaluated and discerned. Every listener can ask a backbiter his objective behind engaging in backbiting and what valid purpose does he seek to achieve through it. His backbiting can be deemed acceptable if he furnishes a valid and admissible Islamic requirement or purpose or if the listeners can themselves make it out as such. Else, if this is not the case, then every listener can tell him upfront that if he is so restless in venting out his bile, he better go home and do whatever he wants instead of making him partake in his sin. But the definition preferred by the dissenter not only shuts the doors upon all permissible forms of backbiting, it also gives a free rein to every person to indulge in every such ill-speech about which he can assert that it is not ill-intentioned and that he has no desire to keep it hidden. After this, no person can question his objective and purpose.

Fifth, every ill-speech that is made within the premises of permissibility as defined by the Prophet would

necessarily be subjected to all those rules and regulations that the Shariah prescribes for all those acts that are essentially impermissible but are allowed in view of certain expediencies. These are:

- i. They can be done only when they are actually required, and there is no other way to fulfil that requirement.
- ii. They can be done only to the required extent.
- iii. Their permissibility comes to an end as soon as that requirement is over and its intrinsic impermissibility then regains its original status.

For example, consumption of pork is essentially impermissible. But if a person is dying of hunger, Shariah allows for its consumption in view of the emergency requirement. This permission can be used only in an emergency, to the required extent and till the emergency remains. It is not permissible for a person to consume pork each time he feels hungry, and eat to his full, and keep a part of it for future consumption. Take another example. Killing a person is essentially impermissible, but allowed if there's an emergency requirement necessitating it. A person can be killed only after it has been diligently decided that it is imperative to do so, and only the required number of people can be killed, and it becomes compulsory to stop the killing as soon as the requirement is met. The same applies to backbiting, something that is essentially impermissible but allowed in view of certain requirements.

However, the dissenter's definition of backbiting does not allow for any permissibility under any condition. On the other hand, he does not impose any of the aforementioned restrictions on the cases that he exempts from this definition.

These are the manifest differences that arise regarding the reality of *gheebat* and its injunctions when we compare the definition provided by the Prophet ﷺ and the one proposed by the dissenter. Now it is for everyone to decide

whether he wants to follow the Prophet ﷺ (the original law-giver) or the dissenter. The statements of Allamah Ibn Hajar and Imam Nawawi that I have reproduced in the previous article (dated June 1959) make it evident that the religious scholars of the Muslim community have understood the legal status of this issue in exactly the same manner that I have explained in these two articles. Also, while engaging in the critical evaluation of narrators, the Hadith scholars never assumed that it was essentially permissible for them to publicly reveal the flaws of the narrators if they do so with a good intention and without any desire to keep it concealed from those narrators. Rather, they took it as an essentially impermissible act that was made permissible in view of overriding necessities. It is for this reason that they have furnished the required justifications for the same, and it is for this reason that they have criticized only those people who used to narrate aHadith and limited their criticism to only those aspects of their character that were germane to their positions as narrators and could have had any effect on the quality of the narration in question. Again, it is for this reason that they have not ventured farther than what was required and have hardly ever transgressed due limits. Whenever anyone *has* transgressed these limits, the other Hadith scholars have taken serious note of it.

If a person were to presume that since we have been commanded to perform certain things, speaking ill of a person or a group of persons behind his/their back in order to fulfil that command becomes permissible or obligatory by itself, and that that it no longer comes under the purview of *gheebat*, then please understand that this presumption of his is faulted. There is no affirmative command of the Shariah that simply cancels its prohibitive command. Be it an obligatory act or a compulsory one, a desirable act or an accepted one, it would nevertheless be performed in the manner that has been prescribed by the Shariah. No evil or forbidden act can ever be declared permissible on the sole

justification that it is being performed in order to fulfil an affirmative command. Nor can the prohibitive commands of the Shariah be so altered that the forbidden act, that is being performed to fulfil an affirmative command, no longer remains forbidden at all. For instance, Shariah commands us to spend in the way of God, and feeding the poor is a noble act that the Shariah enjoins upon us. But would it be permissible to steal money to fulfil this command? And would it then be argued that this is not an act of theft at all because it is essentially being performed to feed the poor? It cannot be denied that in certain conditions, the performance of not only one but many acts of 'evil' becomes permissible for the sake of something that is 'virtuous'. But the rationale of this permissibility is not that this evil deed is being performed to fulfil certain virtuous objectives. Instead, that evil deed can be performed only when the fulfilment of that virtuous act is hinged upon the performance of that 'evil deed' and its expedient need is far greater than the ill-effect of that evil deed, and refraining from performing that evil deed would make it impossible to achieve that immensely important virtuous objective.

It is this rule that makes backbiting permissible in view of certain requirements and valid objectives. Whenever the Prophet ﷺ has criticized someone behind his back or allowed someone to do the same, he has acted in accordance with this very rule. To be more precise, it is these very statements and acts of the Prophet from which we have derived this rule. Else, it is but obvious that when God has Himself prohibited backbiting and His Messenger has himself elaborated upon it by saying that backbiting refers to 'relating the actual flaws of a person behind his back in a way that would offend him', then this impermissible act does not by itself become permissible just because you are committing it to fulfil some other command of the Prophet. Even if it is accepted for the sake of argument that God and His Messenger have given a

specific command to reveal the flaws of Hadith narrators (as insisted upon by a certain person), any person with a logical temper can appreciate that such a command would necessarily be considered as an exceptional clause to the prohibitive command on backbiting. And this would essentially be because the ill-effects of revealing the flaws of some living or dead individuals holds very little significance as compared to the need to preserve and protect the *deen* from getting corrupted.

Tarjumanul Qur'an

October 1959 CE

Backbiting – The Other side of the Debate

One more person writes on the same topic:

"While discussing the issue of backbiting in your June 1959 article, you have cited the definitions offered by certain religious scholars that have been reproduced by Khateeb Baghdadi in alKafayah fi Ilm alRiwayah. An elderly person has accused you of acting dishonestly in this regard. Quoting from the same chapter, that gentleman has proved that what Khateeb actually meant to convey is absolutely antithetical to your opinion. He has held you guilty of deliberately overlooking all those passages and cherry-picking only those quotations that suited your taste. Please clarify your position in this regard."

Reply:

Please go through the article you are referring to. I have never quoted any of Khateeb Baghdadi's opinions, nor have I claimed that he concurs with my views. Why would I refer to the opinion of Khateeb Baghdadi or any personality of even greater repute when I am able to clearly obtain the ruling of a particular issue from the Hadith? All I have done is narrate the opinions of some religious scholars that he has included in his book. Yes, I could certainly have been held guilty of dishonesty if I would have cited his personal opinion in support of my claim.

However, please have a look at two examples of 'honesty' emanating from this 'gentleman' who is audaciously accusing others of dishonesty:

He has said that "Allamah Ibn Hajar (May God have mercy on him) reveals one more aspect of backbiting, which is: 'The actual purpose of speaking ill is to incite corruption'. In other words, Hafiz Ibn Hajar contends that for a speech to be considered *gheebat*, it is necessary that its objective should be to incite corruption."

Now have a look at Fath alBari Vol 2, page 361. What Allamah Ibn Hajar has written is, "There are certain forms of *nameemah* (gossip) that include backbiting. This is when a person gossips about those flaws of a person that are actually present in him and would offend him. The person does so with a malicious intent."

Here, Allamah Ibn Hajar is discussing the definition of *nameemah*, not *gheebat*. What he is saying is that if someone speaks ill about a person behind his back, it would be regarded as *gheebat*, and if the same is done with a malicious intent, to spread corruption, it would be regarded as *nameemah*.

This gentleman is exhibiting even more honesty when he is commenting upon the incident concerning Maiz bin Malik Aslami. He claims that he has gone through all the aHadith that have been recorded in that chapter of Saheeh Muslim that deals with this incident (i.e. *Baab: Mann a'atarafa ala nafsihi bizzina*). After studying all these aHadith, he concludes that, "He had been a man of disrepute even before being stoned to death. Owing to some serious weaknesses of his, this man had lost all esteem before the Prophet ﷺ and the Companions. However, since the Islamic punishment for adultery is rather severe, the Prophet did not initiate any legal proceedings against him until there could be a watertight case against him."

Now let us open up the chapter of Saheeh Muslim that is being referred to here. In this chapter, Abu Saeed Khudri narrates that when Maiz confessed before the Prophet four times to have committed adultery, the Prophet asked his community about him. They replied, "We have known

nothing wrong in him. It's just that he has committed some act about which he thinks that he would not be able to relieve himself of its burden unless the *hadd* (punishment) is imposed upon him." With reference to this incident, Abdullah bin Buraidah narrates from his father that when the Prophet ﷺ enquired about Maiz from his community, they replied, "We know nothing about him except that he is mentally sound, and to the best of our knowledge he is among the righteous people of our community." Upon being questioned again, they said, "Neither is anything wrong with him, nor with his intellect".

The question that arises is, it is from which Hadith of Saheeh Muslim that the gentleman has received information that Maiz bin Malik had been a man of disrepute and that he had lost all esteem before the Prophet and the Companions and that all that they were waiting for was to form a watertight case against him?

This entire edifice has been erected on the premise that, "The Prophet ﷺ delivered a sermon immediately after the execution. In this sermon, the Prophet makes a reference to his ill-conduct when he says, 'Whenever we went out for *jihad* in the way of God, one man remained behind among our household. His cry resembles that of an uncastrated goat'. Imam Muslim has recorded four narrations of similar import from which we can understand what the Prophet and the Companions knew about the character and moral status of Maiz."

First and foremost, it was against the nature and practice of the Prophet to publicly deride a Muslim immediately after awarding him the capital punishment. Hence, even a person having elementary knowledge of the Seerah would never interpret this sermon of the Prophet in the way the gentleman has. Moreover, it is not amply evident from the words of the Hadith that it was intended at condemning Maiz. You are free to go through all those four narrations of Saheeh Muslim that have been referred to.

None of those narrations indicate that it was Maiz bin Malik who used to seek opportunities to despoil the wives of the *mujahideen* when they used to be out on *jihad*. Rather, all that those narrations convey is that after having executed a person for adultery for the first time, the Prophet ﷺ sought to warn those residents of Madinah who used to make the rounds of the *mujahideen*'s houses when they were out for *jihad*. Finding it opportune at this emotional event, when this dreadful execution had sent a shiver down the spine of the entire city of Madinah, the Prophet sent them a notice that this strict penal code has now been established in the state, and any person who is held guilty of this crime would be sentenced to the same punishment that Maiz has just been sentenced to. Just because the Prophet ﷺ had used the words *takhallafa rajulun*, it does not necessarily mean that this *rajulun* (a man) has to refer to Maiz. Other narrations have the words *ahadahum* (a person among them) and *ahadakum* (a person among you), and there is nothing to suggest in the entire corpus of Hadith and personal biographies that Maiz was one of those licentious men. In sharp contrast, his own community had submitted a positive appraisal when they had said that he is an otherwise righteous man and has committed a sin by mistake. It is on this basis that the Hadith scholars have included him in the illustrious list of the *Sahaba* (Companions) and have accepted a Hadith narration of Abdullah bin Maiz on his authority despite his conviction. It is but obvious that had he been a licentious person and would have been covetous of the women of *jihad*-bound *mujahideen*, there would have been no question of regarding him as a Companion and accepting Hadith narrations from such a person.

Further, the gentleman says, "After the execution of Maiz, the Companions (God be pleased with them all) got divided into two camps. One group was of the opinion that the sins of this person so engulfed him that he was eventually destroyed. His confession and words of

repentance did not hold any significance before them. They took these things as inconsequential and remained firm on the disdain that they had against Maiz.”

This claim has been based upon a Hadith that the ‘gentleman’ has himself quoted. The correct translation of that Hadith would be, “Some people used to say that this person has been destroyed. His sin engulfed him.” But he has translated it as, “A group used to say that this person has been destroyed. His sins have engulfed him”. Had he translated the word *khatiyah* as ‘sin’, he would not have been able to substantiate his claim that Maiz was already a characterless person and that the Companions were full of anger against him. He, therefore, assumed this word to be *khataya* and went on to translate this word as ‘sins’ so that many such sins apart from this particular sin of adultery could be credited to the account of this Companion, about whom the Prophet ﷺ has himself said that he has been forgiven by God and has been granted Paradise, and who has already passed away almost a millennium and a half back.

After this, those who had passed the comment, “Look at him! God had kept his sin covered, but his conscience did not spare him until he met such an ignominious death”, are being spoken of in the words, “The nature of their comments was not that of sympathy and concern. Rather, these people, as I have already mentioned earlier, held a very negative opinion of Maiz because of his past disrepute and did not attach any importance to his confession. Hence, this comment not only involved the intention to deride and insult, it also suggested of a severe expression of contempt and anger.”

The wordings of those comments are before you. Does it really tell you that they harboured a negative impression of Maiz because of his past misdeeds and that they held him in disdain and contempt? Do their words really seem to suggest that such a despicable person should indeed have

met with this fate? Had this been true, why did they say that God had kept his sin covered but he did not stay quiet? What else could have been the import of these words other than that they wished that when God had kept his sins covered and there was nobody to testify to his crime, he should have let it remain so, and should not have reiterated his confession several times and have himself executed? Was the desire of these men that he should have saved himself from this punishment (as is evident from their words) a result of their disdain and contempt for Maiz on account of his past misdeeds, because they were satisfied and pleased with his punishment?

I do not want to comment upon this. You can see for yourself how an entire story has been spun just to substantiate his views, and how Saheeh Muslim has been used as a tool to level such dirty allegations against a Companion. That being the case, every person better bear with patience whatever charges this 'gentleman' levels against him.

Tarjumanul Qur'an

October 1959

Two Important Discussions

Quraishi lineage being a prerequisite for the Caliphate

Clarification of ‘Diplomacy’ and ‘Opting for the lesser of two evils’

The conclusion that the author had derived from the Hadith, alAimmatu min Quraish, while discussing the topic of diplomacy, received its share of criticism from various quarters. The author has listed down all the objections that have been raised on this topic and has replied to them accordingly.

“Whatever you have written in your article¹ with regards the Hadith, alAimmatu min Quraish, and the objections that have been raised upon it by various quarters, give rise to certain issues that need to be clarified from a purely academic perspective.

- 1. It has been said that this statement is neither a command, nor a prophecy, nor a bequest, but a decision that was taken by the Prophet ﷺ with regards the question of Caliphate that had erupted in the minds of the Quraish and the Ansar during the lifetime of the Prophet itself, and the Prophet feared that it would take the form of a serious dispute after his demise. Hence, the Prophet made a decision in his lifetime itself that after him it is the Quraish who would be the rightful claimants of the Caliphate. In other words, this decision was merely a provisional one which was intended at quelling the dispute that was to*

¹ Please refer Rasail wa Masail Vol 1 .

arise immediately after the death of the Prophet. Is this a correct interpretation of the Hadith in question?

2. *It has also been said that this decision of the Prophet does not violate the principle of equality. This is because Islam does not recognize absolute equality; it is bound by the condition of merit and competence, and this condition does not go against the principle of equality. Equality does not mean that every person, regardless of his (lack of) competence and merit, should become eligible for every post. Now since the post of Caliph required, among many other qualities, political influence, and since this political influence belonged to the Quraish then, they were preferred over the Ansar for the Caliphate solely on the basis of merit. This interpretation has led them to claim that this decision does not violate the principle of equality. Is this interpretation correct?*
3. *It has also been said that on certain occasions you have said that this Hadith is a command and at other times you have averred that it is a prophecy. Accordingly, a person has cited your statement in Chiruaage Raah (series on Islamic Law, Vol 1, page 180) in which you have said that this Hadith is merely a prophecy and have rejected the idea that it is a command. But now you insist that it is a command. Does this not provide fodder to the speculation that you have either not understood this issue properly or you choose to interpret it variously as per your need and convenience?*
4. *Also, what are those principles that you derive from this prophetic statement and how and where do you seek to apply it? It would be pertinent if you would reply to the following points while replying to this question:*
 - i. *What do you mean when you say hikmate amli (diplomacy) and the rule of ahwoon balliyatain (opting for the lesser of two evils)?*

- ii. *Can this rule also be applied while opting between two indispensable virtues and two mandatory commands?*
- iii. *Do you want the struggle for establishment of deen to now relinquish the rigorous and uncompromising path adopted by the prophets, and instead limp on allowances and excuses and shallow expediencies? Do you wish to amend whichever principle of deen that you feel needs to be amended to fulfil some political requirement, in the name of wisdom and expediency, without giving any thought to Islamic parameters?*
- iv. *Are you, in the capacity of being the leader of the Movement for Establishment of Deen, covetous of authority for yourself, so that you might- under the pretext of diplomacy or ground politics or political expediency- adopt certain rules and commands of deen and reject certain others, hold something permissible and some other thing impermissible and advance something up the priority list and pull something down?*
- v. *If this loose and shaky principle is handed over to the masses, allowing them to adopt whatever they wish and reject whatever they wish in order to fulfil some deeni expediency, then would that not inevitably result in the deen becoming absolutely insecure, and is there not a genuine risk that he who is handed this formula would distort the entire deen altogether?*
- vi. *It is accepted and acknowledged that the law-giver (the Prophet ﷺ) has all the right to tweak and amend his rules, and prioritize something over the other, and carve out allowances and exceptions in the law he has given. But are other people also authorized to cite the changes made by the Prophet and derive principles from the same and then apply*

them to the new issues we encounter? And who exactly is authorized to do this?"

The Author's Reply:

Jumping the queue, I would begin by replying to your third question so that an out-of-sequence issue does not crop up in the middle of the ensuing discussion and carry away our focus from the principal issue at hand. My statement, that has been cited from the Islamic Law series of *Chiraage Raah*, is actually a brief twenty year old note that I had written in response to an Orientalist's essay on 'Islamic Law and Social System' published in the August 1939 issue of *Tarjumanul Qur'an*. Back then, I had not received any opportunity to go into the details of this topic and I had relied upon the study of Maulana Abul Kalam Azad to express an opinion.¹ However, when I engaged in a proper study on this subject I realized that this was a flawed opinion. Accordingly, in the April 1946 issue of *Tarjumanul Qur'an*, I have expressed my revised views on this topic that you can read in the first volume of *Rasail wa Masail* under the heading, '*Khilafat ke liye Quraishiyat ki shart*'.

¹ The context of this piece is that during the initial days of the Khilafat Movement, the European Orientalists had raised an objection, and the British government of India had procured the support of some Maulvis in this regard, that the Caliphate of the Ottoman Emperors was not at all valid because they did not belong to the Quraishi lineage, and being a descendant of the Quraish was a prerequisite for the post of Caliph in Islam. Replying to this, Maulana Abul Kalam Azad had delivered a detailed address in 1920 while presiding over the Calcutta Khilafat Conference. This address was later published in the form of a booklet titled '*Masla Khilafat wa Jazeeratul Arab*' (The Issue of Caliphate and the Arabian Peninsula). In this address, he had emphatically claimed that the Prophet's ﷺ statement, *alAimmatu min Quraish*, was not a command at all; it was merely a prophecy that the Prophet had given in view of the events to follow. It was under the influence of this borrowed study that I had expressed my opinion in the aforementioned note.

There is nothing unique and strange about changing one's views when it comes to academic issues. If any person wants to give it a negative meaning, he is most free to do so. As for why I have changed my opinion, you can read about it in the following pages.

Now let us concentrate on the main issue. The intention of the Prophet ﷺ that you have cited in your first question falls apart on several grounds. To begin with, I fail to understand the exact difference between commanding something and deciding upon a matter, on the basis of which it has been said that it was not a command but a decision. Another thing that I do not understand is what has the issue at hand got anything to do with the Prophet ﷺ preferring the Quraish over the Ansar or over the entire Arab and non-Arab world for the Caliphate? But even if you overlook these questions for a while and analyze this alleged intention from the academic perspective, you would realize that this is nothing but a case of hollow presumptions and wishful thinking, without any factual data or evidence backing it whatsoever. Do you really find any reference in the entire corpus of Hadith, Seerah and history that alludes to any dispute that was found between the Muhajireen and the Ansar on the question of Caliphate while the Prophet was still alive? The Companions were such that they could not even bear with the idea of the Prophet passing away before them. It is far too preposterous to suppose that these dedicated and loyal servants of the Prophet would sit and discuss who among them would be made the successor to the Prophet, and that this discussion would gain such telling proportions that it would manifest itself in the form of a raging issue between the Muhajireen and the Ansar! This is an absolutely unfounded and baseless proposition that has been fabricated in someone's drawing room without taking the effort to refer to any historical data. Moreover, an entire edifice has been erected on this imaginary foundation that whatever the Prophet had said was merely intended at

giving a provisional decision. How, I beg to ask, did anyone manage to gain knowledge and insight into the true intentions of the Prophet? Did the Prophet personally explain it? Or is there any hint in his words that betrays this intention? Or have any of the scholars of later times understood the intention of the Prophet to be such? If none of these questions can be answered in the affirmative, then is there any leash at all that keeps a person from declaring his own unfounded ideas to be the intention of the Prophet ﷺ?

The Prophet's statements regarding the leadership of the Quraish

It's not that there is just one Hadith that we have received from the Prophet in this regard. The Prophet has touched upon this issue on many an occasion and in many a way. Please feel free to go through these prophetic statements and tell me where you come across this alleged intention.

Saheeh Bukhari contains a narration from Hazrat Ma'awiyah (God be pleased with him) that: سمعت رسول الله ﷺ ان هذا الامر في قريش لا يعارضهم احد الا كبه الله في النار على وجهه ما اقاموا الدين "I have heard the Prophet ﷺ say that this task would remain with the Quraish. God would throw into the hellfire every such person who opposes them in this task... as long as they keep the *deen* established".

Abdullah ibn Mas'ood (God be pleased with him) relates a speech that the Prophet ﷺ delivered addressing the Quraish. After due praises to the Lord, the Prophet said, اما بعد يا معشر قريش فانكم اهل هذا الامر ما لم تعصوا الله فاذا عصيتموه بعث اليكم "O people of Quraish! You would remain worthy of this task as long as you refrain from disobeying God. Then, if you disobey Him, He would send

someone over you who would skin you just as the bark of this branch is stripped off.” [Musnad Ahmad]

There is a narration in Musnad Ahmad and Musnad Abu Dawood Tayalisi on the authority of Abu Barzah (God be pleased with him) that the Prophet ﷺ said, *الائمة من قريش ما عملوا بثلاث، ما حكموا فعدلوا واسترحموا فرحموا وعامدوا فوا فمن لم يفعل ذالك منهم فعليه لعنة الله والملائكة والناس اجمعين*. “The leaders would be from the Quraish as long as they adhere to three things. Whenever they judge, they judge with justice, whenever someone makes an appeal for mercy, they show mercy and when they make a promise they fulfil it. If any of them fails to do so, he would be cursed by God, His angels and mankind.”

Both these collections have recorded a similar narration with almost the same wordings on the authority of Anas bin Malik (God be pleased with him).

Imam Shafi'i and Bayhaqi have recorded a narration by Ata' in which he says that the Prophet addressed the Quraish and said, *انتم اولى الناس بهذا الامر ما كنتم على الحق الا ان تعدلوا*, “You are most worthy of having this leadership position as compared to other groups as long as you remain steadfast on the truth. But if you turn away from the truth, you would be skinned just as the bark of this branch is stripped off.”

Imam Shafi'i, Tabrani and Bayhaqi (God have mercy on them) have recorded the following statement of the Prophet through various chains: *قدموا قريشا ولا تقدموما* “Make the Quraish lead you; do not lead them.”

Also, *قريش قادة الناس* “The Quraish are the leaders of the people” [narrated by Imam Ahmad on the authority of Amr bin Aas].

The objective of the aforementioned statement

All these narrations clearly dismiss the idea that the Prophet had taken a provisional decision on the Caliphate to allay an immediate dispute regarding it. Instead, he had permanently decided that as long as the Quraish displayed certain qualities, they would enjoy a preference over others for the Caliphate (even if other groups possess those qualities). This preference of the Quraish was not only over the Ansar; rather, the decision encompassed all Muslims of Arab and non-Arab lineage. The Quraish were to have conditional precedence over all other Muslims for the post of Caliphate. All the religious scholars of the Ummah hold this interpretation to be true. And, except for the Khawarij and Mu'tazilah, no one has ever gone against this stand.

What the Islamic scholars have to say about the leadership of the Quraish:

In the third volume of his renowned book, *alFarq bayn alFiraq*, Abdul Qahir Baghdadi (d. 429 AH) enlists those 15 points on which the Ahle Sunnat hold a unanimous opinion as opposed to those deviant sects that have gone astray. The twelfth point on his list reads:

"It is obligatory and compulsory on the Ummah to establish a central leadership... The leader of this leadership would be nominated by mutual deliberation... And they all unanimously believe that belonging to the Quraish tribe is a prerequisite for being the leader."

Ibn Hazam (d. 456 AH) writes in *alFisal fi alMilal wa alNihal*:

"It is the belief of Ahle Sunnat and Shia and some from the Mu'tazilah and the majority of Murji'ah that leadership is not permissible but for a person belonging to the Quraish. As opposed to this, all the Khawarij and the majority of Mu'tazilah and some Murji'ah believe that this position is open to every

such person who follows the Qur'an and the Sunnah, irrespective of whether he is from the Quraish or a common Arab or even the son of a slave. Dhirar bin Amr Ghatafani says that if an Abyssinian person and one belonging to the Quraish were to both follow the Qur'an and the Sunnah, it would be mandatory to prefer the Abyssinian because it would be easier to remove him from the post in case he turns corrupt."

After citing these various perspectives, Ibn Hazam presents his own study in the following words: "We believe in the obligation of reserving the Caliphate exclusive for the progeny of Fihir bin Malik on the basis of the Prophet's instruction that the leadership should remain with the Quraish. This narration has almost reached the status of tawatir¹ ... The strongest argument in favour of this narration is that the Ansar surrendered their claim to the Caliphate at Saqifah bani Sa'adah when they were reminded of this Hadith. It should be noted here that the city belonged to them, they were stronger in terms of men and resources, and their service to Islam could also not be brought into question. If this narration would not have had the decisive authority of convincing them that someone else was more entitled to the Caliphate than them, they were under no obligation to prefer any other person's opinion over their own." [Vol 4, page 89]

Abdul Kareem Shahrastani (d. 538 AH) writes in his book, *alMilal wa alNihal* (Sects and Creeds) that there is a consensus among the entire Ummah that the leadership is not suitable for anyone other than the Quraish.

[Vol 1, page 106]

¹ Uninterrupted practice that an entire generation learns from its predecessors and passes it on to its successors, generation after generation, such that the probability of it being a lie is infinitesimal...

Imam Nasafi (d. 537 AH) writes in *alAqeedah alNasafiyyah* that: "It is necessary for the leader to be from the Quraish; it is not permissible to make anyone else the leader". While commenting upon this statement, Allamah Taftazani writes, "There is a consensus that except for the Khawarij and some Mu'tazilah, no one else has dissented with this".

Qazi Ayaz (d. 544 AH) writes that "It is the creed of all scholars that being of Quraishi lineage is a prerequisite for the position of Caliph. The scholars have included this in the list of those issues that enjoy a consensus."

[*Sharah Muslim alNawawi, Kitabul Imarah*]

In his commentary on *Saheeh Muslim*, Imam Nawawi (d. 776 AH) writes:

"These aHadith and the other aHadith of similar import make it amply evident that the Caliphate is exclusive for the Quraish and it is impermissible to select anyone else for this post. There was a consensus of the Companions over this matter and this consensus has prevailed in later times as well."

[*Sharah Muslim, Kitabul Imarah, Chapter: alKhilafatu fi Quraish*]

All these leading Islamic scholars have been reiterating the consensus of the entire Ummah on this issue for no less than 800 years. Close to the ninth century, Ibn Khaldun reports that this consensus is losing strength. But the reason for this was not that some other interpretation of this Hadith had been discovered. Instead, the actual reason was:

"When the influence and authority of the Quraish waned away, and their continued opulent and luxurious lifestyle finished off their influence, and the issues of the Sultanate caused them to fan out across the world, they became incapable of shouldering the responsibility of the Caliphate. The non-Arabs had gained such dominance over them that they had taken the reins of governance in their own hands. This led to many analysts falling into disarray and they began

opining that the condition of belonging to the Quraish no longer holds true for the post of Caliphate."

[Muqadma, Page 194]

It was for this reason that as we entered into the tenth century, a vast majority of scholars accepted the Caliphate of the Ottoman Emperors. Now it is for you to decide whether the religious scholars of the Ummah understood this prophetic statement as a provisional decision to quell the dispute between the Muhajireen and the Ansar or a conditional but permanent constitutional rule. Can it even be imagined that all the scholars of the Islamic world made a mistake in arriving at the correct interpretation of a Prophetic Hadith and continued with their mistake for centuries together?

The Truth behind Quraishi lineage being a prerequisite for the Caliphate:

Now let us take up the second question. You don't have to be rocket scientist to understand that 'competence and merit' are used only for those qualities that are possible for every person to attain. These words are not used for those qualities that a person can never attain unless he is born in a particular tribe, family, nation or race. It is only the former kind of qualities that fall in line with the principle of equality. But even if you do extend the words 'competence' and 'merit' for the latter set of qualities, declaring such qualities as prerequisites for a post goes against the very idea of equality. For instance, if you say that any Pakistani citizen who possesses a sharp legal acumen would be considered for the position of a judge, this would be in complete accordance with the right to equality enjoyed by all Pakistanis. But if you say that only a Jatt advocate can be elevated to the post of a judge in Pakistan, no man of reason would say that this rule abides by the principle of equality. No matter what line of logic and argument you adopt- that a judge needs to be in a commanding position, and that the influence of the Jatts has

been dominant in Pakistani courts since many years, which naturally makes being a member of the Jatt community an eligibility criteria for the post of judge- none of your tactics would be able to convince a sane person that the rule of equality among all Pakistani citizens remains intact even after having included this special 'competence' as eligibility criterion for the post of judge. He would tell you that if you are stipulating this clause in view of some specific situation prevalent in your area, please state clearly that you are doing so as an expedient measure. Why are you beating around the bush and unreasonably being adamant upon insisting that this new eligibility criterion does meet the standards of equality?

The fact remains that Islamic Law does not need to resort to such sly tactics to vindicate its stand. The straight and clear principle is that Islam guarantees equal treatment to all Muslims irrespective of their race and colour. In the Islamic system, every person is eligible for every post, provided he is competent enough. It makes no difference whether he is dark or fair, Arab or non-Arab, Semite or Caucasian. This rule had been established right from day-one for all the posts in an Islamic state, save that of the Caliph. Why, even when it came to the Caliphate, the Islamic position was quite clear: 'Hear and obey your Amir, even if he were to be an Abyssinian slave'. However, the reason why the condition of belonging to the Quraish had been stipulated for this particular post at that time was that it was the Arabs who were expected to act as the backbone of the Islamic Caliphate for many years to come. And the Quraish were picked out from among all Arabs because tribal prejudices had not yet been completely eradicated from Arab society. This was the ground reality. These prejudices would not have allowed the Arabs to wholeheartedly accept the Caliphate of any and every Muslim and unite under his leadership in all earnest. This being the prevalent situation, it was considered most appropriate and prudent to hand over the banner of

Caliphate to a tribe whose leadership was already being acknowledged by the Arabs since many generations, whose leadership could keep the Arabs united together and whose power could suppress every rebellion. The Prophet has himself elaborated upon this in many of his statements.

The historical episode of Saaqefah bani Sa'adah has been recorded in Musnad Ahmad, in which Abu Bakr Siddiq addressed Sa'ad bin Ubadah (God be pleased with them) thus:

لقد علمت يا سعد ان رسول الله ﷺ قال و انت قاعد، قريش ولاة
هذا الامر فبر الناس تبع لبرهم و فاجرهم تبع لفاجرهم فقال سعد
اصدقت (مرويات ابوبكر صديق، حديث ١٨)

"O Sa'ad, you are aware of the fact- and you were even witness to it- that the Prophet ﷺ had said, 'The Quraish are the custodians of this leadership. Righteous people follow their righteous men and evil people follow their evil men'. At this, Sa'ad concurred with Abu Bakr Siddiq and said, 'Yes, you have spoken the truth'." [Marwiyat Abu Bakr Siddiq, Hadith #18]

Abu Bakr Siddiq further said,

ولم تعرف العرب هذا الامر الا لهذا الحق من قريش

(مرويات عمر فاروق حديث ٣٩١)

"And the Arabs do not recognize the leadership of any tribe other than the Quraish".

[Marwiyat Umar Farooq, Hadith #391]

We also have a quote from Syedna Ali (God be pleased with him) which reads:

سمعت اذناه ووعاه قلبي عن رسول الله ﷺ الناس تبع لقريش
صالحهم تبع لصالحهم وشرارهم تبع لشرارهم (حديث: ٧٩٠)

I have myself heard the Prophet ﷺ saying- and I clearly remember him saying this- "People are going to follow the Quraish. Their righteous men follow the

righteous among the Quraish and their evil ones follow the evil ones among the Quraish." [Hadith #790]

Similar aHadith have been recorded in Saheeh Muslim on the authority of Abu Hurairah and Jabir bin Abdullah (God be pleased with all the Companions).

This makes it clear that the rationale behind the Prophet's instructions to make the Caliphate exclusive for the Quraish was that their authority and influence had already been prevailing among the Arabs since many years. If, in order to uphold the principle of equality, the post of Caliphate would have been thrown open to each and every Arab and non-Arab, and if a non-Quraish Arab or a non-Arab or the son of a slave would have been selected as the Caliph, it would not only have resulted in him losing control over the Arab tribes, but the evil ones from among the Quraish would also have used this opportunity to raise their flags of rebellion and a considerable strength of the Quraish would, thus, have been lost to rebel factions who would have sought to destabilize the Islamic Caliphate. This being the case, there was a genuine concern that the Islamic system, only one of whose innumerable principles was this principle of equality, would never have been established in the first place. Hence, the Prophet found it most appropriate in the given situation to allow the righteous ones among the Quraish to shoulder the task, so that the power of this tribe could support the Islamic Caliphate instead of opposing it. If this was done, there was a pretty sure chance that the Islamic system would gain dominance and strength. Once it becomes firmly established and gets completely implemented, and the society resultantly gets sufficiently reformed, there would come a day when the principle of equality would be enforced in the matter of the Caliphate as well.

The Principles that can be derived from the Hadīth on Quraishi leadership:

This is the actual intention behind the Prophet's decision, from which we can derive the following principles:

- a. It tells us that those who want to establish and run the Islamic system should not ignore the prevailing conditions and impose the entire charter of Islam all at once. Rather, they should make use of wisdom and foresight and meticulously analyze the ground realities in a way that is expected of a Believer. They should implement those principles and rules that can be easily implemented in the given conditions. And if the ground is not fertile enough to accept some other principles and rules, they should be kept away for the moment and efforts should be expended on making the environment conducive enough to accept those principles. This is exactly what is meant by prudence or diplomacy. We can get scores of examples of this approach from the words and deeds of the Prophet ﷺ, which tell us that establishing the deen is not the work of the naive.
- b. We learn that when, in a given situation, there arises a practical conflict between two Islamic principles or commands or goals, which means that it becomes impossible to simultaneously act upon both of them, then it should be seen which of those two are more important to the Shariah. Once that thing which is more important from the perspective of the Shariah is determined, it should be accorded precedence over the other thing which is not as important. The latter should be shelved until it becomes possible to act upon both of them together. But this should be done only to the least required extent, and only when doing so becomes imperative. The Prophet ﷺ accorded precedence to the stability of the Islamic Caliphate over the principle of equality because the establishment and implementation

of the entire system of Islam was dependent upon the stability of the Caliphate. This commanded exceedingly more importance before Islam than a component part thereof. But the fulfilment of this objective did not require the Prophet to do away with the principle of equality in its entirety. Rather, he suspended only that part of the principle that was related to the Caliphate. This is because its suspension was required only to that specific extent. This is a classic example of 'opting for the lesser of two evils'. Through this example we also understand the context and situation under which this principle is to be applied, as also the rules and regulations governing it.

- c. We also learn that in places where tribal or national or any other form of prejudice is live and active, it is not advisable to directly clash with it. Rather, wherever a particular tribe or community or group holds influence, it is better to hand over the reins of that area to the righteous ones among them so that the power of the influential group can be used towards the establishment of the Islamic system, instead of provoking them against it. The involvement of these righteous souls would eventually create an environment in which every Muslim individual would become eligible for leadership on the basis of his religious, moral and intellectual competence, irrespective of his race, lineage and nationality. This is also part of the same wisdom that I have been accused of calling diplomacy.

If anyone sees anything wrong with these principles that I have derived from the Prophet's words and deeds he is requested to point it out with proper arguments. If anyone contends that it is only the Prophet and nobody else who has the right to make such changes and adjustments, then I would frankly state that the entire science of Islamic jurisprudence would get uprooted if this argument is indeed accepted. This is because all its progress and development was based on the premise that the commands and

adjustments and approach that the Prophet adopted to address the issues of his time should be meticulously studied and those principles should then be derived that could be applied to the issues arising in later times. If the doors are closed upon this, then the Islamic jurisprudence would be restricted to only those issues and situations that were seen during the Prophet's age; we would have nothing to refer to for our contemporary issues.

This is the reply to your fourth question. I would now comment upon each of the sub-points that you have included under this question.

Diplomacy and Opting for the lesser of two evils.

What exactly is *hikmate amli* (diplomacy/practical wisdom)?

i. I have elaborated upon diplomacy in the preceding paragraphs. A brief definition would be: To keep an eye on those conditions in which we are working while establishing the *deen* and implementing Islamic injunctions, and to bring about changes and adjustments in our edicts and approaches with the changing situation, so that the objectives of Shariah are duly achieved. It should not be so that imposing its commands and principles in a hostile environment renders those objectives futile. This prudence, however, is not unbound. It requires a deep insight in *deen* and a keen eye on the essence and spirit of Shariah, so that the concerned person can adopt an approach that is closest to the approach the Prophet would have probably adopted in that situation. Whether this wisdom is worth being accepted or not depends upon the arguments attached; i.e. when the person is employing it in a specific matter, he should present the rationale behind his edict or decision or approach from the Qur'an and the Sunnah, so that it can be known which adjustment adopted by the Prophet he is making the basis of his *qiyas*

(analogical deduction) and from which of his statements is he deriving *istanbaat* (logical and methodical reasoning).

Opting for the lesser of two evils

Whenever a person encounters a situation where adopting one of two evils becomes imperative, then he should adopt the evil that is of comparatively lesser intensity. In the same way, when it becomes impossible to attain two values or objectives of Shariah simultaneously, or if concurrently acting upon two commands of the Shariah becomes unfeasible, then we should adopt that thing which is more valuable and important in the sight of the Shariah. An entity of lesser value and importance should be sacrificed in favour of a more valuable entity, and this should be done only to the extent required in that particular situation. The validity of this rule is also hinged upon the same standard- when a person prefers one thing above another, his choice should necessarily be based upon the Qur'an and Sunnah, and he should be able to prove that it was indeed necessary to prefer this over the other in this particular situation.

ii. Moving on to the second point, it would be erroneous to contend that this rule can only be applied to opt between two evils and not to opt between two virtues or two injunctions. I have already given you an example of this from the life of the Prophet ﷺ. Let us consider another instance from the life of the Prophet that has been recorded through various chains by Bukhari, Muslim, Tabarani, Bayhaqi, Ibn Sa'ad and Ibn Is'haq, among others. Just after the Battle of the Trench, the Prophet commanded a unit to march towards the quarters of Banu Quraizah. He had also emphasized that "None of you should offer their *Asr* prayers (or *Zuhr* prayers, as per some narrations) until they reach the quarters of Banu Quraizah. They, however, became late in reaching those quarters and the time for prayers was coming to an end. The Companions could not

decide whether they should forsake the general command of offering prayers at the stipulated time or this special command that the Prophet ﷺ had just issued. Finally, some of them decided that they would offer their prayers before continuing with their march. Their argument was that what the Prophet actually meant to say was that we should march immediately towards the Banu Quraizah forts in order to expedite the process, and not that we should not offer our prayers. The other group held that they would not offer their prayers before reaching there because this is what the Prophet has emphatically said in very clear words. Later, when this matter was brought up before the Prophet, he did not reproach any of the two groups. Now, here we have two obligatory commands. When there came a time when only one of them could be followed, every soldier personally opted for one of the two commands on the basis of his own discretion, and this was done during the lifetime of the law-giver ﷺ himself. If they would not have had the right to make such decisions, the Prophet would have told them upfront that 'You have exercised an authority in *deen* that you were not legally entitled to'.¹

He is also mistaken who says that while this rule *can* be applied to solve issues and matters concerning individuals, it cannot be applied to matters concerning the establishment of *deen*. This is an absolutely unfounded assertion, having no supportive argument in the Qur'an and the Sunnah. In fact, there are many arguments that prove the contrary. What can be more vital to the establishment of *deen* than the Caliphate? And you have just seen how the

¹ Muslims residing near the North Pole would still face this situation. There, they have to necessarily forsake one of the two obligatory commands- offering prayers five times a day and abiding by the times stipulated for prayers in Shariah- and adopt another. It is obvious that they would either take this decision on their own or procure an edict from a religious scholar. In either case, the decision would be made on the basis of which of these two injunctions is more important and forsaking which injunction would be least damaging.

Prophet ﷺ has himself 'opted for the lesser of two evils' to ensure its establishment and stability. What is more important to the establishment of *deen* than *Jihad*? The Prophet has allowed the soldiers to speak a lie during battle if it is vital to war strategy, as is evident from the authentic narrations of Muslim and Tirmizi. If someone denies this, all I would like to ask him is if you were to establish a government today on the lines of the erstwhile Islamic Caliphate of Madinah, would your government send spies to enemy countries or not? And if you do send spies, would you not allow them to adopt flexibility in a number of Islamic injunctions? Would you insist upon them to maintain a full grown beard, refrain from appearing similar to the non-Muslims, observe all due Islamic etiquettes of food and drink and proceed with their mission by adopting only straight and pure means? Let us suppose you are involved in a war with another nation and you find an opportunity to break the unity of the enemy by means of money, bribe their men of power to rebel against their state, acquire military intelligence from the enemy camp and erect a fifth column within their ranks. Would you cash in on the opportunity or forego it? Let us imagine that you are a soldier in the cause of God and get arrested by the enemy. The enemy tries to make you divulge the battle plan of the Muslim army. You observe that neither can you adopt silence nor can you engage in ambiguous conversation. In such a situation, would you divulge the military secrets of your government and your army or would you rather give false information to the enemy and try to protect the Islamic Caliphate from disaster? Please be specific in your reply so that your stand can be known. Also, please tell us whether 'the establishment of the Islamic Caliphate' and 'fighting in the way of God' form part of your definition of 'establishment of *deen*' or not.

Unsubstantiated allegations and my response:

iii. Further, you have levelled certain allegations against me, which are based on absolutely infirm grounds. I wonder on what basis you have accepted them to be true!

The first allegation is that I have now relinquished the rigorous and uncompromising path of establishing the *deen* and have instead taken recourse to allowances and excuses and shallow expediencies. This is not true. I stand by the path of rigour and rigidity and it is this very path that I have always followed and led my Jama'at towards. But at times I have also advised my Jama'at to adopt certain approaches that fall under the category of 'allowed' and 'permissible' and to discard certain others, based upon the changing situations. In certain exceptional cases, I have also advised them to adopt a lesser evil to the least required extent in order to ward off a greater evil, if opting between the two becomes absolutely necessary. God alone knows what chaste intention has compelled some people to use this as an excuse to shower allegations over me and create an uproar that this man has now given it to allowances and excuses and shallow expediencies.

The second charge is that I harbour political aspirations and it is to fulfil those aspirations that I have resorted to these techniques. Whatever I have done till date has only been done to make the *deen* the dominant system of life; I have no personal or political interests at all.

The third allegation is that 'I wish to amend whichever principle of *deen* that I feel needs to be amended to fulfil some political requirement, in the name of wisdom and expediency, without giving any thought to Islamic parameters'. I, on my part, feel that a person who does such a thing or even supports such a thing deserves to be cursed by God. I have already explained my stand in this regard at various places in this article. Neither do I support any amendment in the principles of *deen*, nor do I hold it permissible to transgress upon its parameters by even an

inch. I denounce doing anything in the name of wisdom and expediency until I can present a valid argument from the Shariah to prove that it is indeed a requirement of wisdom and expediency, and that it is permissible in the light of the Shariah.

iv. The allegation you have levelled against me under this sub-point is also unsubstantiated. I challenge you to cite anything that I have written or said to this effect. All I have said is that if a person, organization or government wants to work for the establishment of *deen*, it is necessary for him/it to keep an eye on the prevailing situation and work wisely. If and when required, he would not only have to make changes in permissible strategies, he would also at times have to take advantage of those allowances that have been granted by Shariah and which even the prophets and blessed companions have not hesitated from using. Unfortunately, some people have taken this to mean that I am covetous of an authority for myself that would allow me to 'adopt certain rules and commands of *deen* and reject certain others, hold something permissible and some other thing impermissible and advance something up the priority list and pull something down'.

Is this some kind of a psychiatric problem because of which you are bent upon extracting the most obnoxious meanings from a person's quote on the premises of some perverted logic? No matter how much he tries to clarify his true stand, you keep insisting that 'No, your actual stand is not what you are saying, but the one that we are attributing towards you'! You seem to act like a prosecution lawyer who has been paid by his client to convict the accused of a crime he is innocent of, by hook or by crook. The situation is made worse by the fact that the client in this case is your own ego. In order to please this ego of yours, you are resorting to every trick in the book to prove that the person you don't like is worth being condemned to hell. When impious rulers get angry with someone, they arrest him by announcing that he is a threat to law and order. When

selfish politicians wish to deride someone, they do so by trying to prove that he is an enemy to the community and the nation. But when religious scholars of a particular class wish to vent out their ire on someone, they try to rope in God and His Messenger as plaintiffs and prove that this person with whom we are angry is actually an enemy of *deen*, is leading people astray and endorsing a false claim. It is to protect the *deen* of the Lord that we are dirtying our hands. How I hope that these people come out of their fury and introspect for a while! What exactly are they achieving by this?

v. The objection that you have raised under this sub-point is another example of blowing a person's quote out of proportion and extracting vulgar meanings out of it. I do not approve of the principle that 'you can adopt whatever you wish and reject whatever you wish in order to fulfil some *deeni* expediency'. Hence, you better ask this question to those who have come up with this loose and shaky principle. I am in no way responsible for its ill-effects.

vi. The reply to this sub-point is that except for those matters that are exclusive to the Prophet ﷺ, the words, deeds, affirmative silence and all other such actions of the Prophet command the status of being sources of law. To regard them as a precedent and make rules for new issues by means of deduction and to extract principles and guidelines from those actions and apply them to the issues at hand is what Islamic jurisprudence is all about. Various people are authorized to engage in this *qiyas* (analogical deduction) and *istanbaat* (logical and methodical reasoning) depending upon their respective scope and sphere. Jurists and judges, state presidents, council of ministers, consultative assembly, its committees, defence and finance ministries, external affairs and home ministries- each and every department of the Islamic system would employ them within the confines of its own concerned jurisdiction. Whenever the commander of an

army or a police officer comes across an emergency situation in the battlefield or the marketplace, he would have to decide there and then which command of the Shariah he is required to implement. Not only this, even if an ordinary citizen is faced with a difficult situation, it is he- and not any jurist- who would be permitted to decide whether that particular situation is serious enough to allow him to consume an otherwise forbidden entity. If his life, property or honour is being attacked, then he would have to decide for himself whether it would be permissible for him to kill his assaulter in self defence, despite knowing all too well that murder is a grave sin. During the delivery of a child, if the midwife feels that it would be impossible to save the life of the mother as well as the child, it would be *her* prerogative to decide if this is indeed that juncture when she can carry the responsibility of the loss of a life. Thus, it is for the person concerned to decide upon the matter that lies under his personal jurisdiction. It is on two factors that such decisions would be based- that the person has a sincere intention to follow divine law, and that his decision should be derived from the Qur'an and the Sunnah.

This is a very strict and stringent principle if it is exercised with utmost sincerity while abiding by the laws of Shariah. At the same time, it is an extremely loose and shaky one if someone is bent upon employing it with ignorance and malicious intent. The entire structure of Shariah is such that if it is handed over to those people who want to free themselves of the restrictions of Shariah, they would make a mockery of *deen* and morality. They would then lead the prayers without performing their ablutions, for the Shariah has not made it obligatory upon anyone to perform ablutions in front of the ones following him in prayer. They can marry four new women everyday and divorce them the very next day to marry four other ones, for the Shariah has allowed men to keep four wives at a time and divorce them whenever they wish. They can plead

helplessness whenever they want to consume forbidden foodstuffs, for the Shariah has permitted a helpless man to do so. If, in order to allay this apprehension, a person tries to close the doors upon something that the Shariah has itself permitted to meet the needs and expediencies of the populace, he would have to close the doors upon the entire Shariah. This is because the Shariah is meant for only those people who wish to abide by it; as for those who want to escape its grip, there are only loopholes and loopholes all along the way.

Tarjumanul Qur'an

July 1959 CE

Islam and Social Justice

This paper was read out in the year 1381 AH (1962 CE) in the holy city of Makkah on the occasion of Hajj.

Wolf in Sheep's Clothing

God has created man in the best of moulds, and one of the most wonderful aspects of man is that he is hardly ever attracted towards openly manifest corruption and obvious vice. This often compels Satan to dish out corruption and vice in the deceptive garb of reform and virtue as best as he can. Even in Paradise, Satan could never have duped Adam by telling him that 'I want you to disobey God so that you might be expelled from Paradise'. Instead, he deceived Adam by saying, "O Adam, shall I direct you to the tree of eternity and a kingdom that never decays?" [Surah TaHa ayat 120]

Man has retained this innate nature till date. Even today, all the slips and mistakes that Satan is causing him to commit are being presented to him in the form of some illusory slogan or draped in some deceptive cloak.

Deception #1: Capitalism and Secular Democracy

One of the most cunning forms of satanic deceptions has been the one that is being presented to the current generation ostensibly in the name of Social Justice. For a very long time before this, Satan kept deceiving man in the name of Individual Liberty and Liberalism. Then, in the 18th century, he conned man into using these two ideas as foundation stones to erect the system of Capitalism and Secular Democracy over them. There was a point in time when this system was so dominant over the world that it

came to be regarded as the final word when it came to human progress; and every such person who wished to be seen as pro-development was left with no option but to endorse individual liberty and liberalism. People actually came to believe that the system of Capitalism and the institution of Secular Democracy that are prevalent in the West are *the* means to salvation. But it was only a matter of a few decades before it became clear to the entire world that this satanic system has caused havoc in this world and filled it with tyranny. Following this mass realization, it no longer became possible for Satan to keep using this slogan to deceive man any further.

Deception #2: Social Justice and Communism/Socialism

Soon thereafter, Satan came up with another trick. He called it by the euphemistic terms- Social Justice and Socialism, under the pretext of which he is now establishing yet another system. This new system has led to unprecedented injustice sweeping through a number of countries across the length and breadth of the globe. But the deception of this system is so blinding that many new countries are inching towards it, assuming it to be the ultimate source of success. Many people still remain oblivious of the deception of this system.

The Height of Psychological Enslavement among Educated Muslims

The Muslims are in possession of eternal divine guidance in the form of the Book of God and the Sunnah of His Messenger ﷺ. This guidance leaves no stone unturned in cautioning them against satanic whisperings and illuminating their path to true success in all walks of life till the end of time. But these poor souls are ignorant of their *deen* and crushed under the cultural and ideological influence of colonial powers. Hence, every slogan that is raised in the camps of global superpowers finds an

immediate echo in our countries. In the era when the ideas of 'renaissance' that flowed from the French Revolution held sway, every educated Muslim took it as an obligation upon himself to present those ideas on every occasion and cast himself in that very mould. He felt that if he did not do so, he would be deprived of all honour and branded an orthodox. When this era passed away, the point of focus of our educated class also began to shift. With the advent of the modern era, advocates of Social Justice and Communism began cropping up from our midst as well. This was still tolerable. What is really alarming is that there is a group that keeps getting formed from among our ranks that wants Islam to also keep changing its point of focus along with it... as if these helpless souls would not remain alive without Islam and it is vital for it to accompany them. But what they actually desire is that Islam should also follow the idea that they wish to follow in order to attain success. Islam would thus be able to absolve itself of the charge of being an orthodox and outdated *deen*! It is for this reason that there had been an earlier attempt to prove that Western ideas like Individual Liberty and Liberalism and Capitalism and Secular Democracy were absolutely compatible with Islam. Now, with the changing winds, they are busy trying to prove that the communist version of Social Justice is found in Islam as well. It is at this stage that the psychological enslavement and deluge of ignorance reaches the depths of ignominy and indignity.

What exactly is Social Justice?

In this brief paper, I would like to explain what Social Justice exactly is and how it should really be established. There is very little hope that those who are bent upon establishing communism under the presumption that it is the sole means to achieve social justice would ever admit to their error in judgment and amend their ways. As long as a person is simply ignorant, there is a lot of scope for correction. But once this ignorant person gains authority,

the element of 'I do not know of any god that you have other than me' [Surah alQasas ayat 38] does not render him capable of hearkening to the advice of any well-wisher. However, by the grace of God, it is always possible to put forward some logical arguments and warn the common folk against the deceptive ploys of the Satan. And it is these common folk who are deceived by people, who are themselves astray and who mislead others and in turn advance themselves in ignorance. Hence, the objective of my paper would be to lay bare the truth before the common folk.

Social Justice can be possible only through Islam

The first thing that I wish to convey to my Muslim brothers is that those who claim that 'Social Justice is present in Islam too' are making an absolutely false claim. The correct statement is that 'Social Justice is present only in Islam'. Islam is the way of life that the Lord and Creator of the universe has revealed for the guidance of man. It is the sole prerogative of the Lord and Creator of human beings to establish justice between them and to decide what constitutes justice and what does not. Neither is anyone else authorized to determine the criteria for justice and injustice, nor is anyone else competent enough to establish true justice. Man is not his own owner and ruler to be entitled to decide what the criteria of justice for human beings ought to be. The status of man in this universe is that of a creation and subject of God, nothing more. Hence, it is not he, but his Master, who has the privilege of deciding upon the criteria of justice. Moreover, no matter how high the status of a person, and no matter how many such high ranking men come together and apply their minds, it cannot be denied that man's knowledge and intellect is limited, and his intellect is influenced by his personal desires and prejudices. Hence, there is no possibility at all that man can come up with a system for himself which is truly based upon justice. No matter how just a man-made system might

appear at first sight, its practical implementation soon makes it evident that it is actually bereft of justice. It is for this reason that every man-made system works only for a few years before it eventually proves itself inefficient. Man, then, discards this system and moves ahead towards investing in yet another foolish experiment. True justice can only be found in the system that God Almighty has created.

Justice is the core objective of Islam

The second thing that needs to be understood at the outset itself that 'There is justice in Islam' is a gross understatement. What is actually true is that justice is the core objective of Islam, and establishment of justice can very well be cited as its *raison d'être*.

God says in the Qur'an:

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ
النَّاسُ بِالْقِسْطِ وَأَنْزَلْنَا الْحَدِيدَ فِيهِ بَأْسٌ شَدِيدٌ وَمَنَافِعُ لِلنَّاسِ وَلِيَعْلَمَ
اللَّهُ مَنْ يَنْصُرُهُ وَرُسُلَهُ بِالْغَيْبِ إِنَّ اللَّهَ قَوِيٌّ عَزِيزٌ ﴿٢٥﴾ (الحديد)

"We have indeed sent Our messengers with clear evidences and sent down with them the Book and the balance that people may uphold justice. And We sent down iron, wherein is great might and benefits for the people, so that Allah may know who supports Him and His messengers unseen. Indeed, Allah is Powerful and Exalted in Might." [Surah alHadeed ayat 25]

These are those two things that a Muslim should never be oblivious of. For, it is then that he would never commit the mistake of seeking Social Justice from a source other than God and His Messenger ﷺ; whenever he comes across the need for justice, he would at once realize that justice is and can be found only with God and His Messenger and nobody else. He would also realize that if justice is to be established, all that needs to be established

is Islam- in its complete, unadulterated and unaltered form. Justice and Islam are not mutually exclusive entities. Islam itself is justice. Establishment of Islam and establishment of justice is one and the same thing.

Social Justice

Let us now understand what social justice exactly is and what would be the proper way to establish it.

The Development of Man

Human society is composed of millions and billions of individuals. Each and every member of this composite possesses a soul, an intellect and a sense of consciousness. Every person has a unique personality of his own that seeks ways and opportunities to grow and develop. Every member has a personal nature and temperament. He has some desires and inclinations. His body and soul have their own requirements. These members cannot be compared to the lifeless parts of a machine. In the case of the latter, it is the machine that is accorded primary importance and its parts are only meant to complete the machine, with individual parts having no personal identity of their own. In sharp contrast, human society is an assembly of living human beings. These members are not made for the society; it is the society that is made for these members. The very purpose for which these members come together to form a society is that helping each other would provide them with an opportunity to fulfil their own needs and meet the requirements of their body and soul.

Individual Accountability

Also, all these members are accountable before God on an individual basis. After going through a specific period of examination (which is fixed, but varies from person to person), each of them has to stand before God and reply to

Him what personality he has developed for himself by making use of the strengths and talents and resources and opportunities that had been provided to him in this world. This accountability is not on a collective level, but on an individual level. There, that Day, it is not tribes and communities and nations that would be held accountable; God would dissociate man from all his past relations and make each and every man stand individually, alone in His court. He would ask each one separately, "Tell me what *you* have done, what have you become?"

Personal Freedom

Both these factors- the development of man's personality in this world and his accountability in the hereafter- require man to have some degree of freedom in this world. If there is a society where man is deprived of the opportunities to develop his personality as per his choice, the human being within him would get strangled, he would suffocate, his strengths and abilities would get subdued. Feeling besieged and caged, such a man would fall prey to stagnation and dormancy. Then, in the hereafter, most of the burden of responsibility of such besieged and caged individuals' crimes would be transferred to those people who are responsible for creating and running such suffocating social systems. They would not only be held accountable for their individual misdeeds, but they would also have to account for establishing a suppressive system and deliberately forcing countless other people to turn into defective personalities, quite against the wishes of those people. It is rather obvious that no Believer can even imagine presenting himself before God carrying such a heavy burden. If he happens to be a God-fearing person, he would definitely be inclined towards providing as much freedom to individuals as possible, so that whatever a person becomes, he would himself be responsible for it, and the responsibility of that person

turning into a flawed personality would not rest with the person running that social system.

Collective Institutions and their Authority

This was about personal freedom. Now consider a society which gets established in an ascending order of clans, tribes, nations and the entire humanity. This order begins with a man and a woman and their children. They form a family. Many such families come together to form tribes and communities. These communities form a nation, which establishes a state to execute the affairs of its collective institutions. The basic purpose of these various collective institutions in these various forms is that by means of their assistance and under their care the individual might receive those opportunities to develop his personality which he would not be able to receive singularly on his own. But this primary objective cannot be achieved unless each of these institutions is empowered to exercise authority over the individual, and smaller institutions come under the authority of larger ones, so that they might restrain the individual from transgressing upon the rights of other individuals and extract from the individual those services that are required for the collective progress and development of the entire society at large. This is where the issue of Social Justice comes into the picture, and the conflicting requirements of individuality and society take the form of a conundrum. On the one hand, the development of the self requires that he should be given complete freedom to develop his personality as per his wishes and abilities. It is also required that families, tribes, communities and other groups should receive the freedom that they require in their own circle within the larger sphere that they belong to. But on the other hand, human development also requires that there should be a restraining authority of the family over the individual, of the tribe and community over the families, and that of the state over all individuals and component institutions so that none of these

may cross their limits to oppress and suppress others. The same issue is faced by the entire humanity- while it is necessary to maintain the freedom and independence of every nation and state, it is also necessary to have a supreme restraining authority over them to dissuade them from venturing past their limits.

Now Social Justice means that every unit and institution- the individual, the family, the tribe, the community and the nation- should receive their appropriate share of freedom and, at the same time, various social institutions should have a restraining authority over the individual and over each other in order to prevent any kind of injustice and transgression. Also; it should be possible to extract due services from these individuals and institutions towards the collective development of the entire society.

The flaws of Capitalism and Communism

Anyone who understands this truth would readily admit that just as the social system of Individual Liberty, Liberalism, Capitalism and Secular Democracy that was established following the French Revolution was against justice, the Communism that is being adopted following the teachings of Karl Marx and Friedrich Engels is also against justice, with the latter being far worse than the former. The problem with the first system was that it had accorded the individual more freedom than what was due to him, giving him a free rein to transgress upon the family, tribe, community, society and nation. It also made the restrictive authority of the society so weak that it could no longer compel the individual to contribute towards its collective development. The fault with this second system is that it makes the state unreasonably strong, almost entirely taking away the freedom of the individual, the family, the tribe and the community. It has invested the state with so much authority to extract services from the individual towards the development of the society that the individuals have been transformed from conscious personalities to the lifeless

parts of a machine. It is a blatant lie to claim that this would lead to Social Justice.

Communism is the worst form of Social Injustice

Communism is the worst form for Social Injustice, far worse than the one practiced by any Nimrod, Pharaoh or Genghis Khan. How on earth can anyone call a system Social Justice where a single person or small group of persons postulate a social philosophy and then use the unlimited and unrestrained powers of the state government to forcefully impose this philosophy over millions of citizens of that nation, confiscate their property, take over their lands, declare their industries to be state properties and turn an entire nation into a prison where the people are deprived of their right to criticize, appeal, complain or seek justice through the court of law. A system that does not allow any organization or platform from which people might raise their voices, any press through which people might express their opinions, any court that they could approach to avail justice! A state where public surveillance is so widespread that every person becomes sceptical of every other person assuming him to be a government spy, where a person gets afraid of speaking his mind even within the confines of his own house, fearing someone would eavesdrop upon his conversation and report it to the government! The state then conducts elections to create an illusion of democracy, but makes sure that no person who disagrees with the creators of this philosophy can participate in these elections, and no person can ever gain an entry who has an independent opinion of his own or who refrains from trading off his conscience.

Even if we were to agree that this system would ensure equal distribution of wealth- although this has not been made possible by any communist regime till date- is Social Justice limited to a mere equal distribution of wealth? I would not ask whether there is any economic disparity between the rulers and the ruled. I would also not ask

whether the dictator of this system and the farmer tilling the land enjoy the same standard of living. All I want to ask is that even if an absolute economic parity does get established, would it really amount to Social Justice? Is this what you call justice- that the dictator and his commies are free to forcefully impose their self-proclaimed philosophy on the public by means of the state machinery- police, the army and its spy network, but no citizen has any freedom whatsoever to even utter a word against this philosophy or even against the smallest aspect of its mode of implementation? Is it justice that the dictator and his handful of commies are entitled to employ all the resources of the country to promote their philosophy and establish all sorts of organizations to meet this end, but even two people holding a dissenting opinion cannot come together to form an organization, cannot address a gathering, cannot have a single statement published in the press? Is it justice that all the landlords and industrialists are replaced by a single landlord and industrialist that you call government- a government that is run by a few cherry-picked individuals who take recourse to every such strategy that makes the entire nation vulnerable and it becomes absolutely impossible for them to lose power to someone else? If there is more to a man than his stomach, and if human life is not limited to the economy alone, then how can you refer to mere 'economic parity' by the word 'justice'? Even if an equal distribution of wealth is ensured among the people, while infiltrating every aspect of life with injustice and tyranny and suppressing every pursuit of life, and even if there remains no disparity between the dictator and the common folk when it comes to their respective standards of living, erecting an edifice of economic equality on the foundations of such untold brutality cannot be equated with Social Justice. On the contrary, it is the worst case of Social Injustice that mankind has never hitherto encountered.

Islamic Justice

Now I would briefly tell you about the Islamic concept of Justice. There is no scope in Islam for a person or group of persons to sit and formulate a philosophy of justice and a method of its implementation on their own and then forcefully impose it without allowing for any dissent. Not even Abu Bakr Siddiq, not even Umar Farooq and yes, not even the Prophet and Messenger of God ﷺ was entitled to do so. Islam has no place for any dictator. It is the sole privilege of God that man should unconditionally bow and submit before His command. Even the Prophet ﷺ was subject to His command. Obeying the commands of the Prophet was made obligatory upon the people simply because he commanded on His behalf, and not because he (God forbid) used to fabricate a philosophy of his own. During the reign of the Prophet and the Rightly Guided Caliphs, the only thing that was over and above criticism was the divine Shariah. This gave each and every person all the right to air his opinion on every matter that was beyond the Shariah, whenever he wished to do so.

The Limits of Individual Freedom

God has Himself demarcated the premises in which an individual's freedom should be limited. He has taken upon Himself to decide which things are forbidden upon a Muslim individual from which he should refrain, and which things are obligatory upon him that he is supposed to fulfil, what are his rights over other people and what are the rights that other people have over him, what are the permissible ways in which he can earn money and what are those sources from which he cannot receive money, what are those things that society is required to do for the welfare of the individual and what are those things that an individual is expected to do for the welfare of society, what restrictions can be imposed on the family, the community and the entire nation and what services can be made

obligatory upon them. All these clauses are cast in stone in the eternal charter of the Qur'an and the Sunnah. Neither can anyone revise it, nor can anyone add or subtract anything from it. While a person has no right to transgress upon the limits of individual freedom that this Charter has delineated for him, it is also true that no one has any right to take away the freedom that this Charter has granted him within these limits. He cannot earn money from those sources of income that he has been forbidden from, nor can he spend that money on those things that have been made impermissible; he would be liable for punishment even if he wanders close to those boundaries. At the same time, he has complete rights over the wealth that he has earned from permissible sources and he has every right to spend it on permissible things, with no one else having any say in this matter. In the same way, a person is obliged to contribute towards social welfare to the stated extent, but he cannot be burdened beyond a certain point unless he is voluntarily inclined to contribute more than his due share. The same holds true for the society and the government, that it would be obliged to fulfil the duties it owes the individual at par with the authority that it has to make the individual fulfil the duties he owes it. If this comprehensive Charter is practically implemented, we would have a complete form of Social Justice that does not lack in any aspect. And as long as this Charter exists, nobody can ever deceive a Muslim into believing that the Communism he has borrowed from elsewhere is in sync with Islam.

This Islamic Charter establishes such a perfect balance between the individual and the society that neither has the individual been given so much liberty that allows him to harm the interests of the society, nor has the society been given the authority to confiscate those rights of his that are required for the development of his personality.

Conditions for Transfer of Wealth to a Person

Islam recognizes only three ways by which wealth can be transferred to a person- inheritance, gift and earnings. Of these, only that inheritance is valid which is transferred from the rightful owner of the wealth to his heir following the guidelines of the Shariah. Only that gift is valid that has been given by the rightful owner of the wealth abiding by the guidelines of the Shariah. And if this gift is being granted by the Government, it would be held valid only if it has been allotted from the state treasury in lieu of some genuine service or for the welfare of the society, following the accepted norms. Moreover, such a gift can only be given by a government that is run in accordance with the Shariah, under the guidance of a Consultative Assembly and is accountable to the public. As for earnings, only those earnings are permissible in Islam that are not earned through impermissible means. Earning money through plagiarism, encroachment, fraud, cheating, corruption, embezzlement, prostitution, black-marketing, interest, gambling, misappropriation, production and sale of alcohol and pornography is prohibited in Islam. Any money that a person earns abiding by these limits would be his rightful income, irrespective of whether it is high or low. No upper or lower limit can be stipulated on such an income. If a person earns less money, it is not reason enough to snatch the money of some other person to augment his earnings. In the same way, if a person has a high income, it does not mean that it would be attenuated by force. However, any money that has been earned from impermissible sources can be questioned by the Muslims. This income would be investigated upon, and if it is proved that it has indeed been earned using impermissible means, the Islamic government would have every right to confiscate it.

Restrictions on Spending

The individual has not been given a free rein to spend his money howsoever he likes, even if he has earned it by

permissible means. Rather, certain legal restrictions have been imposed upon him so that no individual might spend his wealth in ways that could harm the society, or could be detrimental to his own moral and spiritual development. Islam does not allow any person to waste his wealth on immorality and vice, nor is he allowed to spend on alcohol and gambling. He has been forbidden from seeking the services of a prostitute and he has also been forbidden from capturing free people and selling them off as slaves and bondswomen, lest wealthy people keep purchasing and filling up their villas with slave-girls. Splurging a lot of money on opulence and luxuries is also disdained. It even holds it impermissible for a person to lead a lavish life while his neighbour sleeps on an empty stomach. Islam allows a man to benefit from his wealth only through acceptable and Shariah-compliant means. If a person wishes to invest his surplus money to earn even more money, he can invest it in permissible ventures only. He simply cannot transgress upon those limits that the Shariah has imposed upon him.

Social Welfare

Islam stipulates the payment of *zakat* on every such person who has more than the threshold amount of wealth and instructs him to spend it on social welfare. It also imposes *zakat* on his stock-in-trade, agricultural produce, cattle and certain other properties. Take any country in the world and make an analysis. If *zakat* is systematically collected there in accordance with the Shariah and systematically used for the ends mentioned in the Qur'an, would any person remain deprived of the basic necessities of life after a few years?

Then, the wealth that a person has accumulated all his life is distributed to his heirs immediately after his death, so that this wealth does not remain concentrated in the hands of a single person.

Eradication of Injustice

Although Islam encourages an environment where the issues arising between a landlord and his peasants and between an industrialist and his workers are amicably resolved among themselves in an acceptable manner without the courts having to intervene in their matter, wherever there is an instance of injustice the Islamic government reserves all rights of intervention and it can establish justice between the warring parties by taking recourse to law.

The Limits of State Property for the sake of Public Interest

Islam does not hold it impermissible for the state to run an industry or participate in trade. If there is a form of trade and industry that benefits the public at large but the private sector is either reluctant to operate it or the state feels that the intervention of the private sector in that field would be detrimental to public interest, it can take the reins of that field in its own hands. Similarly, if a few individuals are running a particular trade and industry in a way that harms public interest, the state can compensate those individuals and take over that trade or industry and make suitable arrangements to operate it in an alternative manner. Islamic law does not prohibit any of these. But it is against the principles of Islam that all the sources of wealth should be concentrated with the government and that the government should be the sole trader and industrialist and landlord in the country.

The Conditions for Spending from the State Treasury

Islam explicitly states that the state treasury is the property of God and the Muslims. Nobody has the right to spend from it at will. As is the case with all Muslim institutions, the affairs of the state treasury should be executed with the consent of the Muslim community or its

representatives. Every rupee that is taken from a person and every rupee that is spent on anything should necessarily follow the guidelines of the Shariah, and the Muslims should have every right to hold the trustees accountable.

I Leave You with a Question

As I conclude this address, I would like to ask each and every man of reason that if Social Justice is indeed nothing other than Economic Justice, then is the Economic Justice that Islam provides not sufficient enough for us? Is there really any need to usurp the liberties of all individuals, seize their properties and to enslave an entire nation at the hands of a handful of men? What is it exactly that keeps us from establishing a purely Islamic system in our countries that abides by the Islamic Constitution and implement it in its entirety? The day we do this, not only would we become independent of Communist ideas, but even those countries that have been affected by Communism would observe our society and come to realize that the light that they have been evading to wander about in darkness is shining right before them.

Section 3

Islamic Laws and Commands

- The Issue of an orphaned grandchild's inheritance
- The Questionnaire of the Family Law Commission and its Reply
- Is the meat of the animal slaughtered by the People of the Book Permissible or not?
- Fundamental Human Rights
- Imam Abu Haneefah's ruling on the issue of Caliphate
- Imam Abu Haneefah's ruling on issue of Armed Rebellion

The Issue of an orphaned grandchild's inheritance

The issue of the inheritance of an orphaned grandchild had become the subject of debate in newspapers for quite some time. Since this issue provides the Hadith-deniers with a golden opportunity to present their misguided ideas about Hadith, they have been vehemently arguing about it by giving it an emotional twist. Hence, it was deemed necessary to not only engage in a detailed discussion on this topic but also present our view on the issues concerning it. Responding to this need of the hour, the author had written the following article. It was published in the newspaper- Nawae Wakt in the form of two letters. This article would not only help us in understanding this issue, but also give us an idea of the underlying mentality behind it.

The first letter

It has been quite some time since some people have started the propaganda that depriving an orphaned child of a share from his grandfather's inheritance goes against the precepts of the Qur'an. Since the deprivation of an orphaned child from his grandfather's inheritance is a universally acknowledged issue on which all the jurists in the entire history of Islam- right from the era of the respectable Companions to the current age- have been unanimous, and there is no difference in opinion in this regard among the scholars of the various schools of thought like Hanafi, Shafi'i, Hanbali, Maliki, Ahle Hadith, Zahiri and the Shia sect, this propaganda has had far-reaching

effects. Because this issue enjoys such a strong consensus among all the jurists of Islam, the moment it is conceded that it goes against the Qur'an, people would naturally reach the conclusion that the jurists were either ignorant of the Qur'an or they had all deliberately conspired to rule against the Qur'an.

Under the influence of this propaganda, Chaudhary Muhammad Iqbal had proposed a law in the erstwhile Punjab assembly a few years back.¹ This law was intended at making changes in the Islamic law of inheritance and it received overwhelming support from the judges of the Lahore High Court, the deputy commissioners of various districts, district judges, civil judges, the high-ranking bureaucracy and junior officers, lawyers and a large number of municipal commissioners. Following this proposal, the Family Commission headed by Retd. Chief Justice of Pakistan, Miyan Abdul Rashid, tabled its report in which it expressed its support to the proposed changes. Of late, some people have reignited this issue in your newspaper. Before expressing my own opinion, I would like your readers to properly understand this issue in the light of the Shariah.

The fundamental Principles of the Qur'an and the Sunnah on Inheritance:

1. The question of inheritance does not arise during the lifetime of a person. It comes up only after the death of the person if he has left some wealth behind. This basic rule has been clearly laid down in the Qur'an more than once. For instance:

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ
الْوَالِدَانِ وَالْأَقْرَبُونَ (النساء: ٨)

"For men is a share of what the parents and close

¹ It would be germane to note that this letter was written in the year 1959 CE.

relatives leave, and for women is a share of what the parents and close relatives leave."

[Surah anNisa' ayat 7]

إِنْ أَمْرُو أَهْلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتُ فَلَهَا نِصْفُ مَا تَرَكَ (النساء: ٤٦)

"If a man dies, leaving no child, but only a sister, she will have half of what he left." [Surah anNisa' ayat 176]

Similarly, while discussing the issue of inheritance in the 11th and 12th ayaat of Surah anNisa', the words *taraqa* and *taraqtum* and *taraqna* (various grammatical forms of 'left behind') have been repeated again and again. This shows that the rules of inheritance relate to only that wealth that a person leaves behind after his/her death.

2. The following principles can be derived from the aforementioned basic rule:

- No right to inheritance is established before the death of the muwarris¹.
- Only those people would inherit from the muwarris who are actually alive after his death, not those who have been assumed to be alive.
- Those who have already passed away during the lifetime of the muwarris have no right over his legacy. This is because they have died at a time when the right to inheritance had not been established at all. Therefore, no person can stake claim to the inheritance of the muwarris on the basis of him being the heir or representative of those previously deceased people. He can, however, get a share of the inheritance if he happens to be a direct heir of the muwarris as well.

3. The rule that the Qur'an lays down to distribute the shares of inheritance among the living heirs upon the death of the muwarris is not that shares should be given to those who are in need or those who are pitiable. Rather, the rule

¹ Muwarris is an Arabic term used for the person whose inheritance is in question. For want of a suitable English substitute, I have retained the original Arabic word... Translator

states that those who are closest in relation to the muwarris, or in other words, those whom the muwarris is most closely related to, would get a share, and the distant relatives would not get the share in the presence of closer relatives. This rule has been mentioned in the 7th ayat of Surah anNisa' in the following words:

فَمَا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ (النساء: ٧)

"Of what the parents and close relatives leave".

4. Who are the closest relatives of a person? The Qur'an itself answers this question and even stipulates fixed shares for each of them. These relatives are:



5. In this inheritance distribution scheme, every relative who receives a share receives it by virtue of being closely related to the deceased. Neither can anyone else lay claim to any part of a legitimate closely related person's share in his presence, nor can he act as his representative in his absence and lay claim to it.

- Only the real father and mother of the deceased are entitled to the paternal and maternal shares. No other person can lay claim to their share while they are present (alive). However, if the father is not alive, the paternal grandfather would get the paternal share, and if even he is not alive, the paternal share would be given to the paternal great-grandfather. Similarly, if the mother is not alive, the maternal share would be given to the paternal and maternal grandmothers, and if even they are not alive, the maternal share would be given to the paternal and maternal great-grandmothers. This is

not because they represent the real father and mother. Rather, the reason for this is that in the absence of the father, the paternal grandfather becomes entitled to the paternal share; and in the absence of the mother, the paternal and maternal grandmothers become entitled to the maternal share.

Only those sons and daughters are entitled to children's rights who are the biological children of the deceased. If they are alive, this share can never be transferred to the grandchild. However, if none of the children are alive this share can be given to the grandchild.

As opposed to parents, since a person can have more than one child, it often so happens that one or more of his children die in his lifetime and one or more children remain alive after his death. Hence, contrary to parental rights, it so happens in the case of children's rights that if any child of the deceased person is alive, the grandchildren (born to any child) do not get a share from the inheritance. When those who do not understand the basic principle governing this rule happen to come across such a situation, they raise objections. They contend that just as the share of the dead father is given to the grandfather, the share of the dead son should also be given to the grandson. This objection of theirs could only have been valid if a person would simultaneously have been the son of three or four men and upon the death of any of those fathers his share is given to the grandfather, or if the deceased person's grandchildren are not given the share despite the fact that all the children of the deceased have already died during his lifetime.

Then, they commit one more mistake. They presume that the grandfather gets the paternal share (if the father of the deceased has died) on account of being the representative of the dead father. And then they go on to insist that just as the grandfather assumes the position of the deceased person's dead father, so also

the grandchild should be allowed to assume the position of the deceased person's dead son. But it should be understood that this matter is not the same as standing in a ration queue. What matters here is who is closely related to the deceased and who is not. So long as the biological father, of whom the deceased is a direct progeny, is alive, the paternal share cannot be given to the grandfather, of whom the deceased happens to be an indirect progeny. In the same way, so long as the son or daughter, who is a direct progeny of the deceased person, is alive, the children's share cannot be given to someone who happens to be an indirect progeny (grandchild) of the deceased. Please understand that the grandfather does not receive the paternal share on account of assuming the position of the deceased person's dead father. Rather, he receives the paternal share because the death of the direct father legally entitles the indirect father to the paternal share.

- The marital share of the inheritance can be given to only that person who is the actual spouse of the deceased. Since this relation can never be indirect, the death of the spouse during the lifetime of the muwarris completely nullifies this share. There can be no 'representation' here as well, which means that if the wife of the deceased man has already expired, no other person can represent that dead wife (in the capacity of being her heir) and lay claim to her share of the inheritance. In the same way, if the husband of the deceased lady has already expired, the heir of the dead husband cannot act as his representative and lay claim to the deceased lady's inheritance.
- If the deceased has left behind neither parents nor children, only the brothers and sisters can receive the siblings' share, irrespective of whether they are real brothers and sisters or step brothers and sisters. There is no scope for representation here as well. If, say, the brother of the deceased person is already dead, his child

(the deceased person's nephew) cannot act as his representative and claim the share of his dead father. If at all, the nephews can get a share only if the *zavil furooz* (quota heirs who have pre-determined quota shares) are all dead or after the *zavil furooz* have been given their shares and the nephews receive their own share in the capacity of being *asbaat* (residuary relatives), not in the capacity of being someone's representative.

6. The Qur'an has stated the rights of only those people who belong to the four aforementioned principal categories, and the Qur'an has also fixed their shares. This leaves us with two questions. One, after the shares that have been fixed by the Qur'an have been distributed, what would be done with whatever remains? Second, if the relatives whose rights have been fixed by the Qur'an are not present, who would inherit the legacy? Both these questions have been answered by the Prophet ﷺ in his capacity of being the official interpreter of the Qur'an. Drawing from the Qur'an itself, the Prophet has informed us that after the shares of the closest relatives have been given, or if they are not present, the legacy would pass on to those paternal relatives (those from the father's side) who form a man's natural support system. In the same sense, '*asbaat*' refers to those relatives who are prejudiced in his favour (*asbaat* from *ta'asub* which means prejudice). In their absence, this share is given to *Zavil Arhaam* (maternal relatives like maternal uncle, grandfather, nephew or the children of one's daughter or granddaughter). Even in this case, neither is 'representation' taken into consideration while allotting the shares, nor the fact that someone is poor, deprived or pitiable. Rather, the following four principles of the Qur'an are followed:

- i. After exhausting the closest relatives, the share would be passed on to those closest to them. In the presence of close relatives, distant relatives would not be given any share.

وَلِكُلٍّ جَعَلْنَا مَوَالِيَ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ (النساء: ٣٣)

“...from which the parents and close relatives leave”

[Surah anNisa' ayat 7]

- ii. While allotting a share to a person who does not belong to the *Zavil Furooz*, it would be seen who is close to the deceased in terms of benefit. In other words, who is naturally his staunchest defender and supporter.

أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا (النساء: ١١)

“which of them are nearest to you in benefit”

[Surah anNisa' ayat 11]

- iii. Men are naturally more deserving of being *asabah* (the plural of which is *asbaat*) as compared to ladies. Hence, the Qur'an regards the father the *asabah* from among the parents. And it is for the same reason that the Prophet ﷺ has said that 'After the obligatory shares have been distributed, give the remaining property to the men who are closest to them in relation'. However, ladies can also be *asabah* in certain cases. For instance, if the inheritors of the deceased are none but daughters and there is no male *asabah* present, then after the obligatory shares of the daughters have been given to them, the rest of the property would be given to the deceased person's sister because she is the deceased person's natural support in this case.
- iv. The Qur'an states the fourth principle in the 75th ayat of Surah alAnfal and the 6th ayat of Surah alAhzab: "Blood relatives are more entitled to inheritance in the decree of Allah than strangers". It is on this basis that the Prophet ﷺ said, "أَخَاكَ وَارِثٌ مَنْ لَأَ وَارِثٌ لَهُ" "If a person has no other heir, his maternal uncle would inherit him".

These are the Laws of Inheritance in Islam. Any person who has studied the Qur'an in all earnest would never find any difficulty in understanding its principles. It is for this reason that we have always found a consensus

among all the scholars of the Muslim community on the fundamental principles of the Islamic law of inheritance. Differences, if at all, are found only in determining who the *asbaat* are, and with regards the issue of *Zavil Arham*. But never before in the history of Islam has anyone raised a banner of protest saying that all the scholars of Islam have collectively misunderstood the Qur'anic injunctions of inheritance.

The mistaken principle of 'Representation':

I shall now tell you about the issues that arise upon declaring the children of the dead son or daughter heirs of the deceased, and how such a proposal disrupts a logical and systematic law of inheritance and renders it absolutely illogical.

The first issue is that it introduces a completely alien concept of 'representation' in the Islamic law of inheritance. We do not find any trace of this concept in the Qur'an. As per the Qur'an, whoever gets a share of the inheritance, does so because of being a close relative of the deceased, and not because he is a representative of a close relative. While it is true that in the absence of children, the grandchildren get their share and in the absence of parents, the grandparents get their share, it should be clear they do not get these shares because they represent someone. Rather, they get these because in the absence of *direct* children and parents, the *indirect* children and parents naturally get entitled to the children's rights and the parental rights (as we have discussed above). The argument in support of this is that since the heirs of the husband and wife do not have any direct or indirect marital rights on the property of the deceased, if the deceased husband's wife or the deceased wife's husband is already dead, the marital share is never handed over to her/his heirs. For, if the principle of representation would indeed have been recognized in Islam, there was no reason why the in-laws

and step children would not have received a share in the inheritance.

The second issue is that after accepting the concept of representation, these people keep it limited to the grandchildren, despite the fact that it does not make any sense whatsoever. If representation is indeed a valid principle, then the law should have read:

"Every such person who, if alive at the time of the death of the muwarris would have been a legal heir of the muwarris, were to die during the lifetime of the muwarris, all his legal heirs would be regarded as his representatives and they would be entitled to a share from the property of the deceased muwarris."

For instance, let us suppose the wife of a person has died in his lifetime. Now why should we not consider the heirs of the dead wife her representatives and give them her share from her husband's inheritance? A person's father has died in his lifetime. Now if we are to accept the concept of representation, what keeps us from considering all the heirs of the dead father his representatives and allot each of them a share from that person's inheritance? A person lost all his four kids during his lifetime. In this case, why should we not consider the mother of the dead children their representative and, upon the death of her husband, give her the marital share as well as the shares of the dead children on account of her being their representative? A person lost a son who was married but did not have any children. Now if this person dies, would his dead son's widow be considered her husband's representative and given his share of the inheritance? If there is any argument from the Qur'an that holds representation valid only in case of the grandchild, exclusive of all other relations, please bring it forth. And if this rule has been derived from some logical argument, please furnish that as well. And if you do not have any such argument with you, then at least be bold enough to concede that just as this rule of representation is

a fabricated one, its rules and regulations would also be dependent upon your own will and fancy.

The third issue is that this proposal goes absolutely against those principles which a person having an understanding of legal matters can derive from the Qur'anic law of inheritance. The ayaat of the Qur'an indicate that no right to inheritance can be established during the lifetime of the muwarris. This proposal, however, is founded on the assumption that this right gets established during the lifetime of the muwarris itself and it is only its implementation that is delayed till the muwarris actually passes away. Also, the Qur'an recognizes the rights of only those people who are alive at the time of the muwarris' death. This proposal, on the contrary, recognizes the rights of even those people who have expired during the lifetime of the muwarris.

The fourth issue is that the Qur'an has stipulated fixed shares for certain relatives and no one has any right to alter those shares. However, the rule of 'representation' increases certain shares that have already been stipulated by the Qur'an and decreases certain others. For example, let us suppose that a person had only two sons, both of whom died during his lifetime. One of those sons left behind four children and the other son left behind only one child. The Qur'an rules that all these five grandchildren have an equal share in the "children's share" of the inheritance. Hence, they all deserve equal shares from the legacy of their deceased grandfather (i.e. 20% of the share would be given to each grandchild). However, if the rule of representation is followed, 50% of the share would be given to one grandchild and the rest of the grandchildren would get only 12.5% of the share each.

One more mistaken proposal:

In the recent past, some people have offered the following proposal with regards the law of inheritance:

"If the muwarris had a genealogical relative (translated from nasabi rishtedar: one who forms part of the vertical family tree of the person) who would have received a share from the legacy of the muwarris after the latter's death, but he passes away during the lifetime of the muwarris, his place would be taken by his closest genealogical relative, and upon the death of the muwarris he would get the same share that that dead person would have received had he been alive. If they happen to be more than one, the share would be divided among them in accordance with the Qur'anic law of inheritance."

It is on two levels that this proposal restricts certain shares to genealogical relatives. At the first level, only the genealogical relatives from among the dead potential heirs of the muwarris have been selected to receive a share from the legacy, while the rest have been left deprived. At the second level, again, only the genealogical relatives of these dead share holders have been handpicked to get a share from the inheritance, while the rest have been left deprived here as well. The question that arises is: On the basis of which Qur'anic injunction has the caveat of 'genealogical relative' been attached at these two levels? If the Qur'an indeed allows us to grant legal life to those potential heirs of the muwarris who have expired during his lifetime so as to give them a share of the inheritance, then this privilege should be common to all potential heirs. There is no reason why only the genealogical relatives should be singled out for this. Then, after having granted legal life to these genealogical relatives, you give the share of inheritance only to their genealogical relatives and deprive all the other heirs from the legacy of the deceased. Can you furnish proof from the Qur'an that if a heir would have actually been alive at the time of the muwarris' death (and not simply resurrected for legal requirements), and would have died after obtaining his share from the legacy of the

muwarris, then only his genealogical relatives would have been entitled to his inheritance?

Let us keep these fundamental issues aside for a moment. Parents would not be excluded from the purview of 'genealogical relatives' mentioned in this proposal, right? So let us suppose that a person loses his father in his lifetime. His father had a second wife as well and he has children from both his wives. This person has his own children too. This person expires. Your self-attested law compels you to reserve a share for the dead father, which comes to a sixth of the total inheritance. You then distribute this share among his genealogical relatives- all his sons and daughters from both his wives and all his grandsons and granddaughters whose parents had expired during his lifetime. Thus, not only the children, but even the real and step brothers and sisters and nephews and nieces of the deceased get entitled to shares in the legacy. This goes against the injunctions of the Qur'an. As per the Qur'an, if the children of the deceased are alive, neither do his siblings get any share in the inheritance nor do the children of his dead siblings receive any share. However, by making his dead father a share-holder, you have eaten into the shares of his living children.

This is but one example. Many such examples can be presented which would drive home the point that declaring the deceased person's dead father, mother, grandfather, grandmother etc. (all of whom happen to be his genealogical relatives) his legal heirs in the same way as they would have been had they been alive, and then distributing their shares among their genealogical relatives gives rise to complications of mammoth proportions.

My sole intention behind discussing this issue is to make clear the academic and logical status of the amendments that are being proposed today in the law of inheritance that has unanimously been agreed upon by the Islamic scholars. As for the actual nature of complication that arises in the case of the orphan grandchild's

inheritance and its solution, it is not that difficult a question. Some or the other way can definitely be arrived at, in consultation with the scholars, which not only falls in line with the principles of Shariah but would be far better than the current proposals in solving this issue.

The Second Letter

After the publication of my letter on the issue of the orphaned grandchild's inheritance in *Nawae Waqt*, a person from Tonsa Shareef has sent me a copy of a letter written by the late Maulana Abul Kalam Azad and has requested me to express my opinion on the same. He has also asked a few questions in this regard. I am sending you his letter and the reply I sent him so that you might publish the same. Almost all the notable objections that had been raised by your readers following the publication of my letter have been answered in this reply.

Only a couple of things asked by your readers have been left out. For instance, one gentleman has remarked that I had once written that there is no explicit command in the Qur'an or Hadith regarding the deprivation of the orphaned grandchild, but now I am trying to prove it from the Qur'an and Hadith. Allow me to submit that he has not tried to understand my point. All I wanted to say was that it has not been explicitly mentioned in the Qur'an or the Hadith that 'the grandchildren should not be granted a share in the inheritance in the presence of children' in as many words (just as there is no explicit command in the Qur'an or the Hadith that the grandchildren *should* be given the share). However, if the scheme of distribution of inheritance that is discussed in the Qur'an and the Sunnah is studied properly, it necessarily leads us to conclude that the grandchildren would definitely not be given a share in such a case; this being the unanimous opinion of all religious scholars.

In a recent letter, a writer has cited the consensus of the past Jurists over the Caliphate being exclusive for the Quraish and reasoned that since the later scholars have ruled against this consensus, the consensus regarding the deprivation of the grandchild from the inheritance can also be overruled. But it should be known that the aHadith on which that consensus was based clearly specify that the Quraish would remain entitled to the Caliphate only as long as they 'keep the *deen* established'. This was further clarified by Abu Bakr Siddiq at Saqifah Bani Sa'adah when he said that "The Caliphate would remain with the Quraish as long as they keep obeying God and properly follow His commands". Thus, the edict that was later issued in favour of the Caliphate of non-Quraish Muslims was not actually issued to overrule the consensus of the past Jurists; rather, it was issued because the Quraish no longer possessed the qualities that made them eligible for the Caliphate. Hence, it is not at all appropriate to conclude that the later scholars overruled the former consensus. It should also be understood that in case a particular consensus is not based upon the Qur'an or the Sunnah, it can definitely be reviewed. However, if the consensus is based upon the Qur'an and the Sunnah, any review of that consensus can only be carried out on the basis of the Qur'an and the Sunnah. As I have explained above, the same has been followed while issuing a new edict in the issue related to the Caliphate.

Now, I would reproduce the relevant parts of the letter that I had received from Tonsa Shareef and the reply I had given.

1. Would you please shed some light on the new perspective on inheritance that emerges from Maulana Abul Kalam Azad's letter?
2. What we understand from this letter is that the son, on account of being born into the house of the father, comes to be regarded as his father's inheritor, but he would receive the legacy only after his father's death.

(It thus follows that the death of the son does not deprive the grandson of the share of his grandfather's legacy)

3. If this is not true, then on what basis is the minor son of an insane or licentious father allowed to approach the court of law and have his ancestral property protected under the Court of Wards?

Reply:

1. The letter written by Maulana Abul Kalam Azad does not point towards any new perspective on inheritance. The letter begins with the citation of an argument by the Jurists in favour of depriving the orphaned grandchild of the inheritance of his grandfather. Next, without refuting that argument, all he has said is that 'the jurists have concentrated on only one factor, while all the other factors and principles that are well recognized and established in relation to this issue have been ignored'. However, Maulana Azad has not provided any details on the factors and principles 'that are well recognized and established' in relation to this issue which have been ignored by the jurists. Hence, neither do we know what those ignored factors and principles were, nor can we come to know if those factors and principles were indeed well recognized and established or not.

2. From which sentence have you derived the conclusion that 'the son, on account of being born into the house of the father, comes to be regarded as his father's inheritor, but he would receive the legacy only after his father's death'? I could not find even an oblique reference to such a thing in that letter. In fact, this idea goes absolutely against the Qur'an, as I have explained in my previous essay that you have read in *Nawae Waqt*. The Qur'an does not recognize any right to inheritance before the death of the muwarris. And after the death of the muwarris, the inheritance belongs to only those relatives

who are alive at that time. The idea you have referred to is actually a part of the Hindu traditional law that has been followed even among the Muslims of this region since many centuries. The Hindus believe that the ancestral heritage is the shared property of the entire family or bloodline. The family members become the limited owners of the ancestral property one after the other; and their role is to pass on the heritage to the next generation. In a way, all the present and future progeny simultaneously share the common heritage. Under this system, their traditional law entitles the sons to demand their share in the capacity of being the 'eventual heirs' and obtain an ad-interim injunction against their father if he tries to destroy the ancestral property or tries to transfer it to an unrelated person.

Neither does Islam distinguish between ancestral property and non-ancestral property, nor have the rights of the owner been kept limited or conditional. Islam mandates that an owner is the absolute owner of his property during his lifetime, irrespective of whether he has created this property himself or inherited it from his forefathers; and he is completely entitled to sell, gift, will, donate or do anything with his property during his lifetime.

3. There certainly is a provision in Islamic law that allows the court to take the property in its custody if the owner of the property happens to be imbecile or mentally retarded. But neither is there any mention of ancestral property in this law, nor has it been stipulated that the son or potential heir of the owner of the property is required to approach the court. Rather, any person associated with this matter can approach the court to bring it to their attention. There is no clause in the Islamic law that could make one believe that the heir to the property has any special privilege to lodge a complaint against the living owner of that property. This particular clause of Islamic law is not intended at protecting the share of any inheritor. Rather, it is intended at preventing the misappropriation, loss and

wastage of the property and it owes its source to the ayat 'And do not give the weak-minded your property' [Surah anNisa' ayat 5]. Under this law, the property of even that owner is protected who has no potential heir whatsoever.

Those who are so anxious about the inheritance share of the orphaned grandchild should at least decide upon a rule or principle under which the grandchild can be given the share in the presence of the deceased person's sons and daughters. If it is contended that the grandchild, in the capacity of being a child, is himself entitled to the share, and that he is as much a child of his grandfather as the son is the child of the father, then the grandchild whose father is still alive should also be given the same share that his father and all the other sons of his grandfather receive. For example, if a person has four sons and eight grandchildren, then the legacy should be divided into twelve equal shares instead of four. If this is not the case- and there is nobody I know who believes it to be true- then how can simply presenting the 11th ayat of Surah anNisa' in support of the grandchild's alleged right to inheritance and quoting some random Arabic couplet to declare the grandchild to be of equal status as that of the son and then arguing in favour of his inheritance rights be right?

If it is argued that the grandchild becomes entitled to an equal share of the inheritance along with his paternal uncles only if he is an orphan and not when his father is alive, then please note that there is nothing in the Qur'an to suggest this. And even if you overlook the question of furnishing proof from the Qur'an, declaring the orphaned grandchild a shareholder (on the basis of him being equivalent to the son) along with the living sons of the deceased person would mean that he should get equal shares with the sons. For example, if a person has three living sons and the fourth son has died leaving behind four sons, then the legacy of that person should be divided into seven equal shares. But if no one agrees to this as well, then the grandchild would receive the share only if his late

father had become entitled to his father's inheritance while his father was alive, and this orphaned grandchild is not actually receiving his grandfather's legacy, but the legacy of his own father. Now, if this rule is accepted that the son who has passed away during the lifetime of his father retains his right in his father's inheritance, then this cannot remain restricted to only those sons who have children of their own. Rather, the right of even that son who died without having a child and that son who died while he was still quite young or in infancy should be retained, and their legal heirs (e.g. their wives, mother, siblings if the mother is dead) should compulsorily be given that share.¹ There is no legal or logical argument that can be presented to restrict this rule to only that son who has a son. In an attempt to restrict the right of inheritance to the child of a dead son, certain people try to establish a distinction between genealogical and non-genealogical relatives or blood relatives and non-blood relatives. However, such a distinction unlawfully deprives the actual heirs from their rightful share; this being absolutely against the Qur'an, and a Hindu tradition at that. Moreover, it is quite illogical and even ridiculous to assume that only the son is included in the list of genealogical relatives, excluding the mother and siblings from this list.

Tarjumanul Qur'an
January 1959 CE

¹ Those who put forward an emotional appeal in the name of orphans-saying that the orphaned grandchild ought to be given a share- do not seem to sympathize with widows. Would it not be better if they also start demanding shares in inheritance for the mothers of dead infants and the wives of those sons who died before having children? Both these ladies, after all, are widows; and Islam extends the same sympathy towards widows as it does towards orphans.

The Questionnaire of the Family Law Commission and its Reply

The following is a questionnaire that was released by the Government's Family Law Commission towards the end of the year 1955 and the replies given to those questions....

Marriage

Question: Should the marriage ceremony be solemnized exclusively through government-appointed officials?

Reply: No. There is no place for any kind of priesthood in Islamic society. Just as every Muslim man can lead the prayers, he can also solemnize a marriage. Rather, it is also permissible for the couple to simply propose and accept the terms of marriage in front of two witnesses. If a new post of marriage solemnizing official is created by an act of law, you would have to adopt one of the two following approaches. You would either have to derecognize every such marriage that has not been solemnized by the official 'priest' or accept its validity. If the former is adopted, it would result in a friction between state law and the Islamic law, because such a marriage would nevertheless be recognized under Islamic law. And if the latter is adopted, then there is no point in making such a law in the first place.

Question: Should marriage registration be made compulsory? If yes, what should be its procedure and what penalty should be imposed on non-compliance?

Reply: While it would be quite beneficial to register every marriage in a public register, it should not be made compulsory. Islamic law requires that every marriage should necessarily be solemnized in the presence of at least two witnesses and it should be made public so that the relatives of the couple and close acquaintances become fairly aware of this new relationship. It is not at all difficult to find witnesses to the marriage if there does arise a dispute. Yet, there are two ways in which it would become easier to establish testimonies. First, an ideal marriage contract (*nikahnama*) should be published and circulated among the masses so that people might jot down all the required conditions on that paper and take down the signatures of the witnesses. Second, a marriage register should be kept in every town and locality so that whoever wants to register their marriage in that register might do so. People would see merit in these two facilities and adopt them on their own to safeguard their interests. But making it compulsory would lead to two problems. The first is that you would have to then punish those people who do not comply with the rule. This would unnecessarily add to the list of crimes. The second is that the courts would then refuse to recognize those marriages that have not been registered. But the fact remains that Islam grants validity to those marriages that have been solemnized in the presence of two witnesses, and it is beyond the jurisdiction of the court to overrule this. It is also germane to ask what status you would grant those children who would be born to those couples who have not had their marriages registered. Would you declare them to be illegitimate and thus disqualify them from inheriting their fathers' legacy? If you have no intentions of going this far, then what is the point of making marriage registration compulsory?

Question: What method should be adopted to make sure that the bride and the groom (either or both) have not been coerced into marrying each other?

Reply: It is not legally required to affirm that the bride and groom have married each other out of their own free will. As long as it is not proved that the bride or groom have been coerced and forced to marry against her or his will, every marriage would necessarily be considered free and fair. In Islam, the proposal and acceptance are compulsorily carried out in front of two witnesses. The marriage of a mature man is not valid until he accepts it in front of two witnesses in clear and unambiguous words. The girl (if she is a virgin) is not required to verbally accept the proposal. However, if she rejects the proposal in a loud and clear voice, it would be accepted as her denial to the marriage. Thus, the Shariah has already laid down a procedure to confirm the will of the bride and groom, and it is quite sufficient in itself. If someone feels that the bride or the groom has been coerced into the marriage, it is he on whom the burden of proof lies. The law does not seek out proof for lack of coercion. Rather, it asks for proof if there *has* been an act of coercion in the event of such an allegation. Making it mandatory to furnish proof of non-coercion would not only upend the principle of law (i.e. innocent unless proven guilty... Translator), but also lead to a lot of practical problems.

Question: In order to curb the practice of child marriage, it has been proposed that the minimum marriageable age of boys and girls should be fixed at 18 and 15 respectively. Do you agree with this law?

Reply: We do not require any law to curb child marriage. And it is absolutely wrong to fix the minimum marriageable ages at 18 and 15. The boys of our country turn physically mature much before the age of 18. Girls also become physically mature before they cross 15. Fixing the minimum marriageable ages at 18 and 15 would simply mean that we are opposed only to the marriage of younger

boys and girls, and not other means of sexual relations between them. Shariah has refrained from imposing such artificial restrictions because they are entirely irrational. Instead, it should be left to the discretion of the people to decide when they should marry. We need to create awareness among the masses by means of education and intellectual discourse. This would allow them to optimally use their discretionary powers, and cases of child marriage, that are already quite less in our society, would thus gradually decline. Islamic law allows for such marriages because of some practical problems that a particular family might be facing. It is hence important to keep it legal in view of these expediencies. This unpleasant custom should be tackled with education and awareness programs and not with the law. The baton is not the solution to every social problem.

Question: Do you consider fixing the minimum marriageable age as being against the Qur'an and the Hadith?

Reply: There is no explicit command in the Qur'an or the Hadith against fixing a minimum marriageable age. However, there is proof of the permissibility of child marriage in the Sunnah and we have practical examples of the same in the Hadith. How can you outlaw something that the Shariah has made permissible? When you fix up a minimum marriageable age, it indicates that your courts would refuse to recognize a marriage in which the bride or groom is underage, and you would consider such a marriage illicit. Is there any Qur'anic ayat or Hadith that permits you to declare such marriages unlawful and illicit? In fact, this line of questioning is itself fallacious. Fixing the age not only involves a positive aspect, but a negative aspect as well. This does not only mean that you want to fix up a minimum age for marriage; it also means that you want to make it impermissible to marry below this age. Avoiding the negative aspect and asking only if the positive aspect is forbidden in the Qur'an and the Hadith makes you

guilty of presenting only one half of the question. The question would be considered complete when you also ask whether there is any Qur'anic ayat or the Hadith that makes it impermissible to marry below a certain minimum age.

Question: Do you agree that the marriage contract can include every such condition that does not transgress the basic principles of Islam and morality, and that the courts should be empowered to enforce them?

Reply: This question has two parts. The first question is whether such conditions can be included in the marriage contract. The answer is yes, they can be included. But this does not mean that certain compulsory conditions should be added as a requirement of law and included in the ideal *nikahnama* that is published by the government. Shariah has left this matter to the discretion of each and every couple on an individual basis and allowed them to include whichever acceptable condition they wish to add in their marriage contract. Stepping beyond this line and including some specific conditions under the garb of law or custom not only goes against principle but it can also lead to a number of practical difficulties. We know from experience that the married lives of only those people are generally successful who have based their relationship on mutual trust instead of binding the spouse in legally enforceable conditions. The inclusion of conditions, on the contrary, often makes the relationship sour. This is because in such a case, the relation begins with an element of mistrust. The argument that including artificial conditions is not against Islam and moral principles is not sufficient enough. Just because something is not against Islam or moral principles does not mean that it should necessarily be adopted.

The second part of the question is whether the courts can enforce those conditions that have been included in the marriage contract and do not go against Islam and moral principles. The reply to this question is that while deciding upon the enforcement of those conditions that are over and above the ones that have been stipulated by Shariah and

have been included in the marriage contract, the courts should not only see to it that they are not against Islam and moral principles, but they should also look into the status of both parties and determine on a case-to-case basis whether those conditions are reasonable and justified or not.

Question: Do you concur with the proposal that it should be legally accepted that there can be a clause in the marriage contract that the wife would also have the same divorce rights as men have?

Reply: If at the time of signing the marriage contract the bride stipulates that I would enter into a matrimonial alliance with you on the condition that I would be authorized to pronounce divorce upon myself and the groom accepts this condition of hers then this condition can be considered legally acceptable. This is called '*tafweeze talaq*' (transfer of divorce rights) and the Jurists have held it permissible. But it should be remembered that *tafweeze talaq* being legally permissible is one thing and promoting it in the Muslim society is an altogether different thing. The reason why it is legally permissible is that the Shariah has entitled the husband to transfer his divorce rights to any person to allow him to represent him or act as an advocate on his behalf. He can also transfer this right to his wife. But making it a custom or trying to include this condition in every marriage contract goes against the spirit of Islam. Islam has established a fine balance of rights and freedoms between husband and wife. It is the natural and logical requirement of this balance that only the husband should be authorized to pronounce a divorce. Islam has exclusively burdened the man with *mahar*, provisions of the wife during the *iddat* (waiting period after the pronouncement of divorce) and maintenance of small kids during their feeding and growth years. Hence, man is forced to be cautious while exercising his right to pronounce a divorce, because it is he who would have to- quite literally- pay for it. In contrast, Islam has not burdened the woman with any financial responsibility. On the contrary, she only gains

from a divorce, does not lose anything. This could make her act in a highly irresponsible manner when it comes to exercising her divorce rights. Why, she can pronounce a divorce even at the slightest of skirmishes. Thus, transferring this right to the woman goes against the scheme that Islam espouses through its marital laws. The promotion of this custom can lead to disastrous consequences in society and we would be faced with an unprecedented epidemic of divorce cases that our society has, until now, remained immune to.

Question: It is seen that certain sections of our society have an abominable tradition of selling off their daughters. What do you feel would be the best solution to this problem so that the parents or the guardian of the girl refrain from collecting money while giving her hand in marriage?

Reply: This is an extremely disgusting tradition. It should be made illegal. Those who are convicted should be imprisoned or fined.

Question: Do you find it appropriate to prepare an ideal *nikahnama* (marriage contract) and make it binding that all the proceedings of the marriage should be conducted according to it?

Reply: Yes, this is very much appropriate. You should definitely prepare an ideal *nikahnama* in consultation with expert jurists. You should also attach a supplement on the important injunctions of marital law. People usually commit mistakes because they are not aware of these injunctions.

Divorce

Question: If a husband pronounces three divorces all at once, would you consider it to be an irrevocable divorce (*talaq mugallazah*) or would you treat it as a revocable divorce because he has not followed the Qur'anic method of pronouncing three divorces in three menstrual cycles?

Reply: All the four renowned Imams of jurisprudence and the vast majority of jurists contend that three divorces given at once would be counted as three divorces and not one. I also concur with them. Hence, I would not advise you to make any changes in this rule. However, it is also an undisputed fact that pronouncing three divorces in a single sitting is a grave sin, because it goes against the proper procedure that God ﷻ and His Messenger ﷺ have taught us. Hence, this improper procedure should definitely be curbed. I feel that the following measures would prove beneficial in this regard:

1. Muslims should be educated about the correct procedure of divorce. Its wisdom and benefits should be made known to them. They should also be told about the problems they can expect when the incorrect procedure is resorted to. Also, they need to be told that giving a divorce following the incorrect method amounts to a sin. This should also be included in the academic syllabus. The radio and press should also be tapped into for mass awareness. The supplement that you would attach with the *nikahnama* should also include the rules and proper procedures of divorce.
2. Officiating personnel should be disallowed from preparing documents for three-in-one divorces. Non-compliance should attract heavy fines.
3. Those husbands who pronounce three divorces at once should also be fined. We have the precedent set by Caliph Umar (God be pleased with him) in this regard. Whenever such a case was brought to him wherein the husband had pronounced all three divorces at once, he would hold the divorce valid but punish the man who had uttered three divorces at once.

Question: Should registration of divorce be made mandatory?

Reply: There should certainly be a provision for registration of divorce, but it should be made voluntary.

There are a lot of issues involved in making it mandatory. The courts should accept every such divorce whose testimony they receive. They should also accept the statement of the person who has given the divorce to be true, irrespective of whether it is registered or not.

Question: What punishment would you suggest for failing to register the divorce?

Reply: There should be no punishment for not registering the divorce.

Question: Should counseling centres be set up at various locations and should it be ruled that no divorce would be considered valid unless the couple has approached the counseling centre that also has the participation of one arbitrator from each family before pronouncing the divorce?

Reply: Such counseling centres should indeed be set up and courts should also be issued guidelines that they should follow the Qur'anic procedure of third party arbitration before deciding upon marital disputes. But it is not correct to say that those divorce cases that have not passed through these counseling centres or presented before arbitrators would not be held valid at all. The Shariah recognizes every such divorce in which the conditions of divorce have been fulfilled. And this list of conditions does not include the condition of approaching a counseling centre or arbitrator. Now, if the courts refuse to recognize a divorce that is valid before the Shariah, the people would fall into disarray, and this law would contradict the Islamic Shariah.

Question: Should the Family Court have the authority to make sure that the divorcee receives maintenance from her ex-husband all her life or until the time she gets remarried?

Reply: This would be against the injunctions of Shariah and the precepts of Justice. The Qur'an and the Hadith have already determined the cases in which the divorcee is entitled to receive maintenance from the man who has divorced her. It has also determined the period of

maintenance in each of these cases. It would be against the rules of the Shariah to equip her with maintenance all her life or until she gets remarried. It is also against reason that a person who has divorced a lady and is no longer entitled to benefit from her in any way should be compelled to shoulder the burden of her maintenance as long as she lives or until she gets married. This would degrade the moral position of the woman as well. I do not suppose any self-respecting decent woman would ever tolerate the idea of being fed by an unrelated person who is no longer her husband. By including such a clause in our family laws, we would violate the dignity of our lady citizens. Only those women would claim benefit from this law who prefer money over their self-respect.

Women Demanding Divorce

Question: Do you approve of all the clauses of the Dissolution of Marriage Act, 1939 or do you feel it needs to be amended?

Reply: The Act in question is not under my study. I would, hence, not be able to give you any opinion. It would have been better if you would have attached a copy of this Act with this questionnaire.

Question: Do find it appropriate for the Legislative Assembly to come up with a clear and unambiguous law on *khul'a*?

Reply: It would be most appropriate if all the Islamic marital laws- and not just those related to *khul'a*- are codified and published in the form of a booklet. A committee of religious scholars and experienced lawyers should be formed for this purpose.

Polygamy

Question: There is only a single ayat on polygamy in the entire Qur'an [Surah anNisa ayat 3], and even that is associated with the protection of rights of orphans. Do you suppose that polygamy can be prohibited in those cases that have got nothing to do with the rights of orphans?

Reply: It is incorrect to state that the ayat you have referred to is associated with the protection of rights of orphans. It is also wrong to opine that polygamy can be prohibited in those cases that have got nothing to do with the rights of orphans. There are umpteen examples in the Qur'an where along with the principal command, the situation that led to the revelation of that command or the situation in which that command would be executed or the situation that relates to the command has also been revealed. This should not lead anyone (especially a lawyer) to conclude that every such command is 'associated' with only that situation which has been mentioned, and that executing that command or benefiting from that exemption in all other situations is prohibited. For example, it has been stated in the 283rd ayat of Surah alBaqarah that "If you are on a journey and do not find a scribe (to write down the loan agreement), then a security deposit should be taken". But can any person having any knowledge of law ever read this ayat and derive the conclusion that the Islamic law of pledging security against a loan amount is associated only with a traveler who cannot find a scribe? Similarly, the 23rd ayat of Surah anNisa' lists down those female relatives with whom a person cannot marry. In this ayat, the prohibition of marrying a step-daughter is mentioned in the words: "your step-daughters under your guardianship born to your wives with whom you have had intercourse". Does this mean that the prohibition to marry a step-daughter is associated with the caveat that her step-father has to be her guardian? These examples drive home the point that the purpose of mentioning the rights of orphans in the ayat that

allows for polygamy is not at all to restrict the permission of polygamy with only that situation that involves the rights of some orphan. In fact, if we study the context in which this ayat has been revealed, we would arrive at the opposite conclusion. Polygamy was quite prevalent in the Arab society of that time, even before the revelation of this ayat. The Prophet ﷺ himself had more than one wife, and several Companions had multiple wives as well. The fact that the Qur'an did not speak against it was reason enough to believe that it was permissible. This ayat that you have quoted, thus, was not actually intended at allowing polygamy. Following the Battle of Uhud, the purpose for which this ayat was revealed was to tell the Muslims that there was no need for them to get worried about the welfare of the orphans of those soldiers who had fallen in the battle and attained martyrdom. You can very easily solve this issue by resorting to polygamy, a practice that is anyway being practiced in your society. Thus, this ayat did not give any new permission. Instead, it only sought to suggest a solution to the issue faced by Muslim society in the aftermath of the Battle through a practice that was already permitted. The only change that was made was that the number of wives that a person can have was limited to four. Any person who is aware of this context would never fall prey to the misunderstanding that this was the first time that polygamy was legitimized and that it was restricted to only those cases where marrying multiple women was required to protect the rights of orphans.

Question: Do you deem it necessary for a person to obtain permission from the court to take a second wife?

Reply: The Shariah has not differentiated between the first, second, third and fourth marriages. They are all equally permissible. Just as a court's permission is not required for the first marriage, it is not required for the second, third and fourth marriages as well. Such a clause can be entertained only if polygamy comes to be regarded as a social evil that needs to be at least regulated if it cannot be completely

curbed. This is the Roman philosophy of law, not the Islamic one. Hence, while discussing the Islamic law, it would be wrong in principle to bring in a proposal whose basic philosophy itself is at odds with the Islamic philosophy.

Question: Do you agree that there should be a law that restricts the court from issuing such permission until it is convinced that the applicant can provide both wives and their children with the same standard of life that they are used to?

Reply: After whatever I have written above, this question does not remain valid at all. Yet, there are some weak points in this proposal which need to be addressed. This question speaks of a proposal in which the court can permit a second marriage only if the man can provide for two wives and their children. The question that arises is, 'On what basis, then, is a poor person- who cannot provide for even one wife and her future children- permitted to marry for the first time?' Why not let the court decide if a person is financially eligible to marry for the first time as well? Why not make it mandatory for every prospective groom to first convince the court of his financial position before being permitted to get married?

It is equally astonishing that ignoring all the other factors of marital bliss like love and compatibility, only the financial aspect has been singled out- that whether the man desirous of marrying again can bear the financial burden of both wives and their respective children or not! This would necessarily entail that having a second wife would be prohibited upon the poor and middle class, while the affluent would continue to enjoy this privilege.

The most interesting part of this proposal is that the lone factor the court would take into account while permitting a man to marry for the second time is whether he can shoulder the financial responsibility of two wives and their children. But there is a difference between 'can'

and 'would', with the former not necessarily guaranteeing the latter. We have come across many such cases in which despite earning a good income the man is neglectful of his financial responsibilities towards one wife. How does your proposal address such cases? Instead of coming up with such lame proposals, would it not be better for us to satisfy ourselves with the rule of Shariah that a man should have the right to marry more than once, and if any of his wives feels that she is not being treated with justice she should be allowed to move court?

Question: Should there be a law that if a man marries for the second time, the court would ensure that the first wife and her children are provided with at least a half of his salary? And in case the man is not salaried but has other sources of income, should he furnish a guarantee before the court that he would keep giving at least a half of his income to his first wife and child?

Reply: This proposal is absolutely preposterous. A man is not necessarily responsible for the upkeep of his wife and children alone. He might also have his parents, younger siblings and other relatives to look after. In such a case, it would be most unjust to rule that he should give at least half his income to his first wife. Then, if the first wife happens to be childless and the second wife has children, would it not be unjust to devote half the income to the childless wife while the second wife and her children have to adjust in the other half of the income? Instead of framing such headless rules, the Shariah mandates that the husband should treat both wives with justice, and if any of the wives approaches the court to complain of injustice, the judge should suggest an appropriate remedy by taking into account the family's situation.

Mahar

Question: Do you agree that there should be a law that makes it compulsory for the husband to pay the *mahar* (payment made to the bride by the groom) that is decided upon in the marriage contract, no matter how large the sum?

Reply: Payment of *mahar* is already compulsory in the Shariah. What is the need to make a fresh law to that effect? However, if the law is intended at making the payment of every amount of *mahar* compulsory in all cases, then this would be against the Qur'an and against reason and justice. The Qur'an allows the woman to forego her *mahar* and also allows her to settle for a reduced amount of *mahar*. Moreover, if the *mahar* amount exceeds the capacity of the husband, or if his financial condition deteriorates with time making it impossible for him to pay a huge amount of *mahar*, or if such a ridiculously high *mahar* is promised in the marriage contract that seems unreasonable to every person, then there should be a provision for the courts to intervene and suggest an appropriate settlement.

Question: Do you find it appropriate that there should not be a legal time frame for the payment of *mahar*?

Reply: The couple is free to either decide upon a time frame or not decide upon a time frame for the payment of *mahar*. This would be a mutual decision of the couple and the law is not required to intervene in this matter.

Question: What have you to say about the proposal that if no time frame has been decided upon for the payment of *mahar*, half of it should be considered as immediate (on demand) and the other half deferred (to be paid after the dissolution of marriage or death of the husband or divorce)?

Reply: In such a scenario, the entire *mahar* should be considered immediately payable upon demand. However, if

the court observes that the amount of *mahar* fixed is indeed beyond the capacity of the husband, it can come up with an appropriate mode of payment. Making a law and limiting the options available to the courts would not be the right thing to do.

Custody of the Child

Question: Under the current law, the mother is entitled to the custody of the child till a certain age- i.e. the son would stay with her till he turns 7, and the girl till she comes of age. This specification of age does not find mention in the Qur'an or the Hadith; rather, it is the opinion of certain jurists. Do you think it needs to be changed?

Reply: The interest of the child is paramount in this case. The allotment of custody of the child should be decided on a case to case basis depending upon which parent would be best suited to ensure the proper education and grooming of the child. It would not be right to make a blanket law favouring any single parent. However, it should be made legally binding upon the parent who is given custody of the child that he/she would not prevent the child from meeting the other parent. Of the renowned jurists, Allamah Ibn Taymiyyah and Ibn Qayyim also hold the same opinion that I have expressed above.

The Upkeep of Wife and Children

Question: Do you approve of the proposal that if a man does not spend on the necessities of his wife and children without any valid reason whatsoever, the wife would be entitled to move the Special Family Court against him?

Reply: Yes

Question: Under the current Criminal Procedure Code-Section 488, a wife can approach the court to demand her

maintenance. However, the court can grant her a maximum monthly allowance of hundred rupees. Are you satisfied with this amount or would you like to see it increased?

Reply: The court should be authorized to stipulate an amount taking into account the financial status of the couple. It is not appropriate to stipulate a fixed amount.

Question: Do you concur with the proposal for a law that would allow the wife- in such cases- to demand three years worth of maintenance?

Reply: Fixing the period to three years is not correct. The lady should be granted the maintenance amount of the years she has been kept deprived by her husband.

Question: If the wife has stipulated a special condition with regards the period of maintenance, would the maintenance be paid to her only till the completion of her waiting period (after divorce) or till the period stipulated in the marriage contract?

Reply: During a marriage, it often so happens that under compulsion of the community and clan, or for the sake of courtesy, unreasonable conditions are included in the marriage contract. Such conditions should not be encouraged. If the marriage contract includes the condition of any maintenance that is beyond the valid right of the wife, it should not be enforced by the law.

Custodianship of Property

Question: Do you agree that in the absence of the father, the court should declare the mother to be the custodian of the kids' property, provided that the court feels that such a move would not go against the interest of the children and the protection of the property?

Reply: This should be done in a case where the interest of the children makes it necessary to make the mother the custodian of their property. Such a condition can arise if,

for instance, there is no male member in the family capable of being the custodian, or there *is* a male member but there is a risk that entrusting the property to him would harm the interest of the children.

Question: Do you agree that there should be a law making it compulsory for the custodians of minors to obtain the court's permission before selling the property or mortgaging it?

Reply: This is a very good proposal.

Inheritance and Will

Question 1: Do you agree to the proposal that if there is any part of Pakistan in which the Islamic law of inheritance and will is not being acted upon, then a law should be made at the earliest to ensure that the law of the Shariah is acted upon in each and every part of Pakistan?

Question 2: In view of the obstacles and hurdles inherent to the current legal system, do you, in order to ease the inconvenience faced by women, support the proposal that whenever a woman is found to be a petitioner in any inheritance case, the Civil Court should transfer her case to the Family Court to have it fast-tracked?

Reply: Both the proposals are appropriate.

Question: Is there any explicit clause in the Qur'an or any command in an authentic Hadith that the orphaned grandson or granddaughter should necessarily be kept deprived of the inheritance?

Reply: This clause is automatically derived from the basic principles of inheritance that have been enshrined in the Qur'an and Hadith. The proof of its genuineness is that any alteration that is made therein to make the orphaned grandchildren heirs to the inheritance disrupts the entire framework of the law of inheritance that is based on the basic principles the Qur'an and the Sunnah. It is for this

reason that the Jurists of Islam have had a consensus on this issue right from day one. Since this is not the occasion to delve into the details, I would request you to refer to the pamphlet, '*Pote ki Wirasast ka Masla*' (The Issue of the Grandson's Share in Inheritance) that has been published by Jamaat-e-Islami. I am enclosing a copy of this pamphlet herewith.

Question: Would it be permissible to make a law by which a Muslim person could transfer his property to another person on condition that the property would return to the original owner or his heirs after the death of the person to whom it has been transferred?

Reply: Islamic jurisprudence calls such a deal 'Umraa', and it has been disputed upon by the various jurists. Imam Abu Haneefah, Imam Shafi'i and Imam Ahmad bin Hanbal have ruled that such a property cannot be transferred back to the original owner or his heirs upon the death of the person to whom it has been transferred, even if it is explicitly mentioned in the transfer documents in as many words. On the contrary, Imam Malik avers that the property that has been transferred to the second person only for his use during his lifetime would automatically be transferred back to the original owner or his heirs when the person to whom it had been transferred passes away, except when the original owner has explicitly mentioned that the said property has been transferred to the second person and his heirs. Most of the aHadith support the first stand; and it seems to be the most appropriate stand when seen from a logical perspective as well. If a property is to serve a person only during his lifetime, he starts neglecting it in his final days. His children would also show utter disregard towards a property that is anyway going to be transferred back the moment he passes away. Thus, such a condition results in putting the property to waste. When the original owner or his heirs would receive the property back in a damaged state, they would start complaining. Hence, Islamic law mandates that if a property is to be transferred it should be

transferred for good; it is not desirable to do so with the condition that he would keep it only till his lifetime. The Hadith that lends support to this stand is as follows: "Keep your properties with you and do not lay them waste. If a person gives anything to another person for his lifetime, it would become his property not only during his lifetime but would remain so even after his death, getting transferred to his heirs as part of his legacy". [Ahmad, Muslim]

Question: In your opinion, does the *Family Waqf Act (Mussalman Waqf Validating Act, 1913)* need to be amended such that the property that has been given *Waqf* status can be sold off or altered or made use of in some other profitable manner to benefit from its inflated price or for some other reason, after taking due permission from the Court?

Reply: It would be better if this Act is scrapped off altogether. It is the source of many a difficulty and complication. Moreover, the Shariah does not provide any firm foundation for its clauses.

Dissolution of Marriage through the Court

Question: Do you think there should be any changes in the reasons for dissolution of marriage that have been enumerated in the second section of the Dissolution of Marriage Act?

Reply: I have not gone through this law, and hence would not be able to comment upon it. It would have been better if you would have attached a copy of the said section along with this questionnaire.

Question: Should there be a law that if a woman applies for the dissolution of marriage and the court feels that the husband is at fault, she would- upon divorce- not be required to return the *mahar* and other things that have been given to her?

Reply: There is a provision for such a thing in the Shariah. I, thereby, support this proposal. But it should be taken care that the guilt of the husband should not be established on the basis of modern Western ideology, but on the basis of Islamic ideology.

Question: If the conflicting natures and temperaments of the husband and wife have made it difficult for them to lead a happy married life, does it provide sufficient grounds for the dissolution of their marriage?

Reply: In the case of conflicting natures, the court should first follow the Qur'anic method of third party arbitration, so that two reliable family members of the couple can try and bring about reconciliation. Then, if they submit to the court that they have been unable to make them reconcile, the court need not investigate the cause of their conflict, but it should definitely ascertain if it has indeed become impossible for the couple to stay together. After this, the court is free to adopt either of the two ways- if the wife so desires, it can rule in favour of a separation (*khula'*), or it can compel the husband to pronounce a divorce instead of keeping her case suspended.

Question: Clause 3 Section 3 of the Dissolution of Marriage Act allows for dissolution of marriage if the husband is serving a prison term of seven years or more. Do you think it would be better to reduce this period to four years instead?

Reply: I do not agree with the provision to dissolve the marriage because of prolonged imprisonment. Moreover, allowing the wife this liberty would not solve the core issue. The women of our society are not such that they would approach a court and file for a separation if their husbands are imprisoned for a long term. This is all the more improbable in the case of those women who have children to take care of. Hence, the majority of women would not take recourse to this law and their problems would remain unsolved. In my opinion, the proper solution

to this issue is that the following three amendments should be brought about in the prison rules:

1. Prisoners who are serving a sentence of four or less years should be released on parole at least twice a year for a minimum of 15 days so that they might go home and spend time with their families.
2. Instead of lodging prisoners serving a sentence of more than four years in the jail, they should be lodged in townships that are meant exclusively for prisoners serving a long term. Here, they should be allowed to stay along with their wives and children.
3. The prisoners should be paid for the work that they do in jail at par with the market rate and the amount should then be sent (in part or full) to their families for their upkeep.

Family Court

Question 1: Do you favour the proposal that in every Commissionerate, a judge of the rank of District or Session Judge should be appointed in courts that deal exclusively with family and marital cases?

Question 2: Do you favour the proposal that those cases that come under marital and family laws and in which a woman is the petitioner should be filed only in such courts?

Question 3: Do you favour the proposal that the jurisdiction of these courts should be different from those of the current civil and criminal courts, and a law should be passed to ensure that such courts decide upon every case within three months?

Question 4: Do you favour the proposal that there should be no court fees and other expenses in such courts?

Question 5: Do you agree that in such courts, the litigants can argue through their representative or relative instead of seeking the services of a qualified lawyer?

Question 6: Do you agree that there should be at least one man and one woman to assist the judge in the capacity of his advisors?

Question 7: Do you agree that such courts should call for a session in different districts on a rotational basis?

Question 8: Do you agree that the litigants should not be allowed to appeal more than once?

Question 9: Do you agree that the appeal, if any, should be made directly to the High Court, and the decision on this appeal should also be issued within three months?

Reply: The reply to all these nine questions is that all these proposals are absolutely appropriate.

Question: What methodology would you suggest to ensure that the order passed by these courts is duly enforced and the money is retrieved from the erring party?

Reply: The same procedure should be followed that is followed to enforce the orders of other courts and retrieve the amount that is payable to government institutions.

Question: How should we bear the expenses of such courts?

Reply: An appropriate fine should be imposed on the party that is proved to be the oppressor or the one who has wasted the time of the court and the other party. A part of this penalty money should be given to the other party and the remainder should be used to meet the expenses of the court. Apart from this, the demand for a *mahar* that is beyond a reasonable amount should not be accepted without a stamp paper, and the more the amount of *mahar* crosses the reasonable limit the more should the stamp duty be levied. Such steps would not only help in reforming the society but would also be helpful in alleviating the financial burden of the courts to a substantial extent. The remaining amount, if at all, can be paid by the state treasury.

Is the Meat of the animal slaughtered by the People of the Book Permissible or not?

Those who travel to Europe and America from our country to work or study are usually faced with the issue of searching for food that Islam allows them to consume. Those who are least concerned about the Islamic permissibility of the food consume everything that is dished out to them. Some people get fed up of the dietary restrictions and start eating whatever is available in those countries, but deep down in their hearts they do concede that what they are eating is nevertheless forbidden. However, there is a sizable population of these immigrants who wish to abide by what is permissible and refrain from whatever is forbidden. These people often enquire about the dietary restrictions in such countries- what they can consume and what they should abstain from. I have been replying to such questions on a personal basis and through the medium of Tarjumanul Qur'an as well. But this issue has now taken an altogether new turn. Our citizens there have been observing that people of certain other Muslim countries consume the meat that has been cut by machines without the name of God having been pronounced on the animal at the time of the slaughter- without any reluctance, without batting an eyelid. This leads to an argument. In defense, they furnish edicts issued by their country's religious scholars which allow them to consume such meat. A young Pakistani man has written to me about this in a letter that I have received just a few days back. After going through this letter, and the edict issued by the religious scholars of Iraq (a copy of which he has enclosed with his letter), it seems necessary to present a complete academic discussion on this issue so that our youth can save themselves from getting carried away by their arguments

and adopting a wrong stand, and if possible, correct the views of their colleagues as well.

The Pakistani man's letter

This Pakistani young man, who is currently studying in London, writes:

"The issue of meat has led to a confrontation between me and some Middle Eastern students. I have presented the arguments that you have provided on this topic in Rasail wa Masail in various ways and on various occasions, but they wouldn't budge. Now, two students with a religious bend of mind have procured two edicts from Iraq. They have insisted that I send those edicts to you so that you can provide a critical analysis of the same. I have, thereby, enclosed both the edicts with this letter. Your reply is eagerly awaited.

One thing about this issue of meat that I would like to know is whether there is any specific method of slaughter mentioned in the Qur'an or the Hadith. Can the animal be slaughtered using a machine after pronouncing Allah's name over it?

Since many different ways are being adopted by Western countries to slaughter animals, it becomes very difficult to categorize them all under 'dead meat' until we are certain of the details of each of those methods. Hence, instead of getting into the debate of whether it is indeed dead meat or not (and hence impermissible), I prefer citing those two ayaat in which we have been forbidden from eating that meat on which Allah's name has not been pronounced and slaughtering an animal in the name of a deity other than Allah has been made impermissible."

The edicts of Iraqi jurists enclosed with this letter

Edict #1:

The reply to your enquiry about consuming the meat of animals slaughtered by the People of the Book is that when God- in His infinite wisdom- allowed the Muslims to consume the meat of the animals slaughtered by the People of the Book, He did not say, "The meat of animals slaughtered by the People of the Book is permitted to you". What He instead said was, "The food of the People of the Book is permitted to you". (وَلَا يَحِلُّ لَكُمُ الْكَيْبُوتُ وَلَا الْغَنَاقُ وَلَا مَا فِي أَرْبَابِهِمْ وَلَا مَا فِي أَرْبَابِهِمْ وَلَا مَا فِي أَرْبَابِهِمْ وَلَا مَا فِي أَرْبَابِهِمْ) (المائدة: ٥). This means that whatever food that is consumed by the priests and followers of Judaism and Christianity- with the exception of pork- can be consumed by the Muslims. As far as their slaughter is concerned, God has not stipulated the condition that they should necessarily have pronounced Allah's name during the slaughter or should have slaughtered the animal following the procedure followed by Muslims.

It is mentioned in Surah alMaidah that the Prophet has not left us without perfecting the *deen*. God has said in the 3rd ayat of this Surah, (الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتِمَمْتُ عَلَيْكُمْ نِعْمَتِي) (المائدة: ٣). "This day I have perfected your *deen* for you and completed my favour upon you". It is worth noting here that the allowance of consuming the food of the People of the Book very closely follows this ayat which speaks of the *deen* having been perfected. This conspicuous proximity shows that just as the *deen* of God is complete and everlasting and its injunctions are permanent and unalterable, the permissibility of eating the food of the People of the Book is also cast in stone. God has not made this command specific to any particular period or era. And it is but obvious that when God revealed this command, He knew all too well that in the future the People of the Book would slaughter animals by stabbing their heads with a spear.

Apart from this, we also have that the Prophet ﷺ was once presented with poisoned meat by a Jewess. The Prophet ate it without enquiring whether Allah's name has been pronounced on this goat or what procedure has been followed while slaughtering it. In this context, the Prophet has also said, "Whatever God has permitted in His Book is permissible and whatever He has forbidden is impermissible; as for those things on which He has maintained silence- not because He is forgetful, but out of His mercy- you should not dig into it". The Prophet has also said, "I have not elaborated upon certain things, so do not ask me about them. The communities preceding you were destroyed because they used to ask too many questions to their prophets and indulged in disputes. Hence, if I stop you from doing something, refrain from it. And if I command you to do something, try to do it to the best of your ability".

Imam Ibn alArabi alMa'afiri (Maliki jurist from Spain) has provided concrete arguments to prove that if a Christian person chops off the head of a chicken using a sword, it is permissible for a Muslim person to eat it. The same ruling should be applied to packaged/canned meat that is prepared by Christians and Jews.

It should also be understood that even if those Christians and Jews who have conclusively received the call and message of the Prophet ﷺ were to pronounce the name of Allah, their pronouncement of Allah's name would not be acceptable by Him until they accept Islam. Hence, it makes no difference whether such people pronounce the name of Allah upon slaughtering the animal or not. However, those who have not received the call of Islam and to whom the message has not been conclusively conveyed are steadfast on their original religion and they are right on their part.

If a polytheist (who is neither a Christian nor a Jew) slaughters an animal, eating its meat is impermissible even

if he pronounces Allah's name a thousand times while doing so. On the contrary, it is permissible to eat the meat of the animal slaughtered by a Muslim even if he forgets to pronounce Allah's name while slaughtering it. This is because every Muslim heart is always brimming with the remembrance of Allah.

Abu Dawood has recorded a Hadith, in which the Prophet ﷺ was asked about a piece of meat that some villagers had brought and about which it could not be ascertained if they had pronounced Allah's name while slaughtering the animal. The Prophet replied, اذكروا اسم الله "Pronounce Allah's name upon the meat and eat it". On another occasion, the Prophet was asked about the permissibility of eating Roman cheese. He was told that the Romans prepare this cheese using the rennet of piglets. The Prophet simply replied, اني لا احرم حلالا "I cannot make a permissible thing impermissible". The Prophet ignored the questioner when he prodded further.¹

¹ No reference has been provided, making it difficult to verify this Hadith. The narration recorded in Abu Dawood's collection only mentions that some cheese was brought to the Prophet during the Tabuk expedition. The Prophet sent for a knife, pronounced Allah's name, sliced it and consumed it. While explaining this Hadith, Khattabi has written, "This cheese was made using the rennet (which means that the infant calf/lamb was slaughtered and its stomach was removed. Milk was then curdled in the stomach lining of the slaughtered animal to prepare the cheese) and this procedure was used by both- the Muslims as well as the disbelievers. Abu Dawood has included this narration in his collection to show that the Prophet considered it permissible since there was no apparent reason to consider it otherwise". [Mukhtasar Sunan Abu Dawood, Martaba Hamid alFaqih, Vol 5, page 328]

There is a Hadith recorded in Musnad Ahmad on the authority of Ibn Abbas that a piece of cheese was brought to the Prophet during a battle. The Prophet enquired where it was made. They replied that it had come from Iran and we assume that it is made using a dead animal (i.e. from the rennet of an animal that has been slaughtered by the Magians, not the Muslims or the People of the Book). The Prophet asked them to take the name of Allah before cutting and

One of the rules that the Jurists have derived in this context is that 'Food cannot be rejected merely on the basis of doubt and speculation'. Also, 'The *deen* of God is simple. So keep it simple, do not make it tedious. Do not make it repulsive for people'.

Edict #2

God says, (المائدة: ٥) **الْيَوْمَ أُحِلَّ لَكُمُ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حَلَلٌ لَكُمْ** "All good foods have been made lawful, and the food of the People of the Book is lawful for you...." [Surah alMaidah ayat 5] This ayat makes it amply clear that the food of the People of the Book (which includes their slaughtered food as well) is permissible for the Muslims. God knows best whether the People of the Book pronounce the name of Allah while slaughtering their animals or not. God has allowed us to eat their food, irrespective of whether the name of Allah has been pronounced or not. While explaining the 121st ayat of Surah alAn'am which says **وَلَا تَأْكُلُوا مِمَّا لَمْ يُذَكِّرْ اِسْمُ اللّٰهِ عَلَيْهِ وَاِنَّهُ لَفِسْقٌ (الانعام: ١٢١)** "And do not eat that upon which the name of Allah has not been mentioned, for indeed, it is *fisq* (grave disobedience)", Shaikh Zadah writes: "Apparently, this ayat forbids all those things on which the name of Allah has not been pronounced- whether deliberately or unintentionally. Dawood Zahirī also concurs with this opinion. Imam Ahmad is also known to have held

consuming it. However, this episode has been narrated from Ibn Abbas's student, Ikramah by Jabir Ju'afi who is a known liar. Hence, it cannot be relied upon. Another narration by Ikramah that has been recorded by Abu Dawood Tayalisi through Amr bin Abi Amr does not have any mention of 'dead animal'. All it mentions is that it had been brought from Iran. [Musnad Abu Dawood Tayalisi, Hadith #2684]

Now, it needs to be known which book of Hadith the respected scholar has referred to suggest that the Prophet ﷺ considered it permissible to consume the cheese prepared from the rennet of a piglet, and how sound the chain of that narration is.

the same opinion. Imam Shafi'i and Imam Malik have opined that it is always permissible to consume the meat of the animal slaughtered by a Muslim person, whether or not he has pronounced the name of Allah while slaughtering the animal. Their argument is based on the Hadith, ذبيحة المسلم حلال و ان لم يذكر اسم الله عليها 'The meat of the animal slaughtered by a Muslim is permissible even if the name of Allah has not been pronounced upon it'. Imam Abu Hanifah has made a distinction between deliberately not pronouncing it and forgetting to do so.

Scholars have ruled that the food on which the name of a deity other than Allah has been pronounced is *fisq* (It has also been mentioned in the 145th ayat of the same Surah that dedicating a sacrifice to a deity other than Allah is an act of *fisq*). This is true if the clause 'it' in the 121st ayat refers to 'that' (i.e. the food in question). But it is also possible that the pronoun 'it' refers to the act of eating the food in question. In that case, the ayat would mean that eating the food on which the name of Allah has not been mentioned is an act of *fisq* (and not the food itself)."

While elaborating upon this ambiguous sentence, Shaikh Zadah further adds, "The 121st ayat of Surah alAn'am forbids all those things on which the name of Allah has not been mentioned, either deliberately or unintentionally. This is because the words of the ayat are general in nature and include all foodstuffs. Accordingly, Ata' has gone by this general sense. He considers all those things impermissible on which the name of Allah has not been mentioned, irrespective of whether it is eaten or drunk. However, the majority of scholars are in agreement that this ayat refers to only that animal that has died without the name of Allah having been pronounced over it. Such an animal can fall under three categories:

1. It is not slaughtered; it dies in some other way.
2. It is slaughtered, but the name of a deity other than Allah is pronounced over it.

3. It is slaughtered, but no name has been taken over it (neither Allah's nor that of any other deity).

There is no doubt about the fact that the meat of the animal would be impermissible in the first two cases. But there is a difference in opinion as far as the third case is concerned, with three rulings being presented:

1. It is absolutely impermissible, as is evident from the general meaning of the ayat and applies to all the three cases.
2. It is absolutely permissible. This is the ruling of Imam Shafi'i. He says that it is permissible to eat the meat of an animal that is slaughtered without the name of Allah having been mentioned over it, whether deliberately or unintentionally, provided the animal is slaughtered by a Muslim or by a person from among the People of the Book. Imam Shafi'i reads it along with the 145th ayat of Surah alAn'am and makes the general command of the 121st ayat specific to render it applicable to the aforementioned first two cases alone. The argument he presents in favour of the third case is that the *zikr* (remembrance) of Allah is anyway present in the heart of a Muslim in all cases; his heart is never devoid of it. Hence, the animal he slaughters is also permissible in all cases. The animal slaughtered by a Muslim would become impermissible only if he pronounces the name of a deity other than Allah while slaughtering it, because God has called it *fisq*. In any case, there is a consensus that eating the meat of the animal slaughtered by a Muslim does not come under the purview of *fisq* even if he does not mention the name of Allah during slaughtering it because acting against a derived command does not make a person guilty of *fisq*. In short, the 121st ayat would apply only to the first two cases and not to the third one.

The next part of this ayat lends credence to this view. It says, "And indeed the devils inspire their allies to

dispute with you". This is because the allies of the devil used to dispute with the Muslims on only two counts. The first of these was about the consumption of dead meat, about which they used to taunt the Muslims that 'you merrily eat the animal that has been killed by a dog or a flacon, but you refrain from eating the animal that has been killed by God'. The second was about slaughtering the animal in the name of a deity other than Allah. They used to argue that 'we also have a god just as you have yours. But while we eat the meat of the animal that you have slaughtered in the name of your god, you do not eat the meat of the animal that we have slaughtered in the name of ours. Why is that so?' Since their dispute revolved around these two issues, the prohibition of 'do not eat' also related to these two issues only.

Moreover, God concludes this ayat by saying, "If you were to obey them, indeed you would be polytheists". This clause also makes it clear that the obedience to pagans and polytheists would not result from eating the meat of the animal on which the name of Allah has not been pronounced. Rather, it would result from considering dead meat permissible and sacrificing animals at the altars of idols and slaughtering them in their name.

3. The third ruling is that if the person slaughtering the animal has deliberately skipped the name of Allah, it would be impermissible to eat the meat of that animal. But it would be permissible if he has simply forgotten to mention the name of Allah. This is Imam Abu Haneefah's ruling. He says that although the ayat apparently applies to all those three cases and makes the meat impermissible in them all, an exception would be given if the name of Allah has not been taken because of a slip of mind. This is for two reasons. The first reason is that the pronoun 'it' in 'it is *fisq*' refers to 'the name of Allah has not been mentioned' because it

is the closest clause; and it is best to refer the pronoun to the closest clause. Thus, a person who deliberately skips the name of Allah is guilty of sin. But he who has forgotten cannot be held accountable. Hence, the command would not be applicable in his case. The ayat would thus mean, 'Do not eat the meat of the animal on which the name of Allah has deliberately not been taken'. The forgetful person would thus stand absolved. The second argument presented by the respected Imam is that a Companion once asked the Prophet, "If while slaughtering an animal, a person forgets to mention the name of Allah over it, what should be done with the meat?" The Prophet replied, "Eat the meat of that animal. Allah's name is present in the heart of every Believer".

The 'People of the Book' mentioned in the 5th ayat of Surah alMaidah covers both- Jews as well as Christians. Hence, in light of the command issued in that ayat, it is permissible for us to consume the meat of the animal slaughtered by the Jews and the Christians, even if they have slaughtered the animal in the name of a deity other than Allah. Ibn Abbas (God be pleased with him) says that "If the Christians slaughter the animal in the name of Christ, it is not permissible for us to consume its meat". However, the majority of scholars opine that the meat would be permissible even if it is slaughtered in the name of Christ.¹ Once, Imam Sha'bi and Ata were asked if it was

¹ This is a false statement. Slaughtering an animal in the name of Christ clearly falls under the category of 'dedicated to a deity other than Allah'. How can the majority of scholars be unanimous on its permissibility? The relevant rulings of the four schools of jurisprudence that have been mentioned in the 1st volume of alFih al Mazahib alArbah are as follows: The Hanafi school believes that if someone from the People of the Book pronounces the name of Christ while slaughtering an animal, eating it would not be permissible (pg. 726). The Maliki school permits the slaughter of the People of the Book on the condition that the name of a deity other than Allah should not have been pronounced over it (pg. 727). The

permissible for a Muslim to eat the meat of the animal that a Christian person slaughters in the name of Christ. They both replied that it is permissible for us to eat the meat of the animal slaughtered by a Christian because when God allowed us to eat the meat of the animal slaughtered by Christians He knew too well whose name they would take while doing so.

An analysis of the Issue

There is nothing unique about the edicts issued by the Iraqi scholars. Before them, Fazilatul Shaikh Husnain Muhammad Makhloof and before him, Mufti Muhammad Ubadah and Allamah Rasheed Raza have declared that the meat of the animal slaughtered by the Christians can be consumed by the Muslims even if the name of Allah has not been pronounced over it and it even if it has not been duly slaughtered. They have all furnished the same arguments in support of their respective edicts. But before discussing those arguments, we should first understand the issue at hand.

The Qur'anic restrictions on eating non-vegetarian food

The restriction imposed by the Qur'an on meat and the explanations provided by the Prophet in authentic aHadith are as follows:

Shafi'i school says that the slaughter of an animal by even a Muslim would be impermissible if he adds the name of Muhammad ﷺ along with that of Allah (with the intention of associating Muhammad ﷺ in divinity) while slaughtering the animal (pg. 729). The Hanbali school states that if a Christian slaughters an animal in the name of Christ eating its meat would not be permissible (pg. 730). The question that needs to be asked is that if all the four major schools of jurisprudence are unanimous upon its impermissibility, then who are those majority scholars who hold a consensus on its permissibility?

Those things that are prohibited for consumption:

The first restriction that has explicitly been mentioned in the Qur'an at four different places is that the meat of dead animals, blood, the flesh of swine and that animal which has been slaughtered in the name of a deity other than Allah have been forbidden. This command has been issued in Surah alAn'am ayat 145, Surah anNahl ayat 115, Surah alBaqarah ayat 173 and Surah alMaidah ayat 3. The first two have been revealed in Makkah and the other two in Madinah.

Surah alMaidah- the final surah dealing with injunctions- has two more additions. It does not restrict 'dead animals' to only those animals that have died a natural death. It also includes within this category those who have died because of strangulation, or by a violent blow, or by a head long fall, or by the goring of horns or eaten by a wild animal. Similarly, under the head 'slaughtered in the name of a deity other than Allah', it includes those animals which have been slaughtered at the altars of pagans and polytheists, irrespective of whether the name of a deity other than Allah has been taken or not.

The Prophet ﷺ has added donkeys and beasts and birds of prey having claws in this list of prohibited consumables, as is evident from a number of authentic aHadith. For details, the reader is referred to *Neel alAwtar, Kitaab alAtamah wa asSayd wa alZabaih*.

The condition of duly slaughtering the animal (*tazkiyah*)

The second condition that has been mentioned in the Qur'an is that only that animal is permissible for consumption that has been duly slaughtered. The 3rd ayat of Surah alMaidah says,

حُرِّمَتْ عَلَيْكُمْ الْمَيْتَةُ.....وَالْمُنْخَبِقَةُ وَالْمُتَوَدَّةُ وَالْمَرْدِيَّةُ وَالنَّطِيجَةُ وَمَا
أَكَلَ السَّبُعُ إِلَّا مَا ذَكَّيْتُمْ (المائدة: ٣)

"Prohibited to you are dead animals... those killed by strangling or by a violent blow or by a head long fall or by the goring of horns or those from which a wild animal has eaten, except that you slaughter it before its death."

This clearly means that only that animal is excluded from the list of prohibitions that has been duly slaughtered. In all the other conditions, wherein the animal dies without being slaughtered, it would remain prohibited. The Qur'an does not provide practical details of this *tazkiyah* (act of slaughter), nor does the dictionary help us much in this regard. Hence it becomes imperative for us to seek its meaning from the Sunnah. Accordingly, there are two modes of slaughter mentioned in the Sunnah.

The first case is when the animal is not within our control. It might be a wild animal that is sprinting away or evading us. It might also be that the animal is under our control but we are unable to get an opportunity to slaughter it as per the norm. In this case, *tazkiyah* would require us to wound the animal with a sharp instrument such that its blood flows out of its body and the animal is killed because of the wound we have inflicted upon it and the resultant loss of blood. The Prophet has said in a Hadith recorded by Abu Dawood and Nisai, "Use any tool to bleed (the animal)".

The second case is in which the animal is under our control and we can slaughter it at will. In this case, it is necessary to slaughter it using the proper procedure that has been explained in the Sunnah. Camels and other similar animals would be slaughtered by piercing a spear or other such sharp instrument in the animal's throat causing blood to burst out. The animal would then collapse because of loss of blood and eventually die. This is called *nahar* and it was commonly practiced by the Arabs to slaughter camels. The Qur'an also makes a mention of it when it says, "*fasalli li Rabbika wanhar*" [Surah alKauthar]. The Sunnah

also tells us that the Prophet used this method to slaughter camels.

As for the slaughter of goats and cows and other such animals, the aHadith say:

عن ابي هريرة قال بعث رسول الله ﷺ بديل بن ورقا الخزاعي على جمل اورق في فجاج منى الا ان الذكاة في الحلق واللبة، ولا تعجلوا لانفس ان تزهق (دارقطني)

It has been narrated by Abu Hurairah (God be pleased with him) that on the occasion of Hajj, the Prophet sent Budail bin Warqa' Khuzayi on a grey camel to make an announcement in the hilly tracts of Mina that the place of slaughter is between the throat and the pancreas.¹ And do not make a rush in killing the animal. [Daar Qatani]

عن ابي عباس ان النبي صلى الله عليه وسلم نهى عن الذبيحة ان تفرس (طبراني)

Ibn Abbas (God be pleased with him) narrates that the Prophet ﷺ has forbidden us from severing the spinal cord while slaughtering the animal. [Tabarani]

Imam Muhammad has narrated a Hadith on this topic from Saeed bin alMusayyib in which he says, ان النبي ﷺ نهى ان تنزع الشاة اذا ذبحت "The Prophet has forbidden us from cutting till the spinal cord when slaughtering goats".

On the basis of these aHadith and the testimonies regarding the regular practice of slaughter during the eras of the Prophet and the Companions, the Hanafi, Shafi'i and Hanbali scholars believe that the throat and the esophagus should be cut, while the Maliki scholars believe that the

¹ i.e. the animals should not be slaughtered from its mane (dorsal aspect) which would cut the spinal cord first. Instead, it should be slaughtered from the ventral aspect where the windpipe and esophagus are located.

throat and the blood vessels of the neck should be cut.
[alFiqh alal Mazahib alArbah, Vol 1, Pg. 725-730]

All these three forms of slaughter that have been mentioned in the Sunnah while elaborating upon the Qur'anic injunction of slaughter have one thing in common- the animal does not die a sudden death. Rather, the connection between its brain and its body is maintained till its last breath. Its convulsions and contractions drain out all the blood from its body. It dies because of loss of blood (Hemorrhagic shock ... Translator). Now since the Qur'an has not elaborated upon this injunction and this is the only explanation that we have received from the bringer of the Qur'an, we have no other option but to believe that the Qur'anic clause, 'except that you slaughter it' refers to this very kind of slaughter. It thus follows that the animal that has been killed without fulfilling this condition of slaughter is prohibited upon us.

The Qur'an mentions one more form of slaughter in addition to the three mentioned above- that the animal is hunted by a trained beast, provided the trained beast holds the prey for its master instead of eating it itself. In this case, even if the hunted animal dies because of the wound inflicted by the hunting beast, it would still be considered to be an act of slaughter.

وَمَا عَلَّمْنَاهُمْ مِنَ الْجَوَارِحِ مُكَلِّبِينَ تُعَلِّمُونَهُنَّ مِمَّا عَلَّمَكُمُ اللَّهُ فَكُلُوا مِمَّا أَمْسَكْنَ
عَلَيْكُمْ (المائدة: ٣)

"...and such hunting animals as you teach, training them to hunt, teaching them the knowledge Allah has given you- you may eat what they catch for you."

[Surah alMaidah ayat 4]

The Prophet ﷺ has offered the following explanation in this regard:

فان امسك عليك فاذركته حيا فاذبحه و ان ادركته قد قتل ولم
ياكل منه فكله و ان اكل فلا تاكل (بخارى، مسلم)

"If the hunting beast holds the prey for you and you find it alive then slaughter it. And if you observe that your dog has already killed the prey but has not eaten anything from it, then you may eat of it. But if the dog has eaten from it, then do not eat it."

[Bukhari and Muslim]

و ان اكل منه فلا تاكل فانما امسك على نفسه (بخاری، مسلم، احمد)

"If the dog has eaten from the animal, then do not eat it. This is because it had hunted the prey for its own food."

[Bukhari, Muslim, Ahmad]

وما صدت بکلبک غیر معلم فادرکت ذکاته فکل (بخاری، مسلم)

"And you can eat the animal that you may have hunted by means of an untrained dog, provided you find it alive and slaughter it".

[Bukhari and Muslim]

This shows that if a trained hunting beast hunts down an animal for its master and kills it in the process, it would fulfil the condition of 'slaughter' that the Qur'an has imposed. It would thus be exempted from the prohibition of 'that eaten by a wild animal' and included in the concession of 'except that you slaughter it'. But it is only for a trained hunting beast that the Qur'an lays down this command. The Prophet ﷺ has said that this command would not even include that pet animal which has not been trained for hunting. Hence, it cannot be applied to something else that kills the animal. The words of the Hadith that 'you can eat the animal that you may have hunted by means of an untrained dog, provided you find it alive and slaughter it' makes it amply clear that if an animal has not been duly slaughtered but has died in some other way, it would be considered as a 'dead animal'.

The condition of pronouncing the name of Allah (*tasmiyah*)

The third condition mentioned in the Qur'an is that the name of Allah should be pronounced on the animal while

slaughtering it. This command has been mentioned in different ways at various places in the Qur'an.

An imperative command has been mentioned in the 118th ayat of Surah 'alAn'am:

فَكُلُوا مِمَّا ذُكِّرَ اسْمُ اللَّهِ عَلَيْهِ إِنْ كُنْتُمْ بِآيَاتِهِ مُؤْمِنِينَ ﴿١١٨﴾ (الأنعام: ١١٨)

"So eat the meat of the animal upon which the name of Allah has been mentioned, if you believe in His ayaat."

A prohibitive command has been mentioned in the 121st ayat of the same surah:

وَلَا تَأْكُلُوا مِمَّا لَمْ يُذْكَرِ اسْمُ اللَّهِ عَلَيْهِ وَإِنَّهُ لَفِسْقٌ ﴿١٢١﴾ (الأنعام: ١٢١)

"And do not eat of that upon which the name of Allah has not been mentioned, for it (i.e. slaughtering without taking the name of Allah or eating the meat of such an animal) is indeed fisq."

While laying down the command regarding trained hunting beasts in the 4th ayat of Surah alMaidah, the Qur'an says:

فَكُلُوا مِمَّا آمَسَكْنَكُمْ عَلَيْكُمْ وَادْكُرُوا اسْمَ اللَّهِ عَلَيْهِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ سَرِيعُ الْحِسَابِ ﴿٤﴾ (المائدة)

"So eat of what they catch for you, and mention the name of Allah upon it¹, and fear Allah. Indeed, Allah is swift in account."

We also note that at many places the Qur'an does not make any mention of the word 'slaughter'. Instead, it uses the phrase 'mention the name of Allah over it' to connote slaughter:

لِيَشْهَدُوا مَنَافِعَ لَهُمْ وَيَذْكُرُوا اسْمَ اللَّهِ فِي أَيَّامٍ مَّعْلُومَةٍ عَلَىٰ مَآرَئِهِمْ مِنْ بَيْنَةِ الْأَتْعَامِ ﴿٢٨﴾ (٢٨)

¹ On what should the name of Allah be taken? This has been explained in a Hadith below.

"That they may witness the benefits for themselves and mention the name of Allah during the specific days over the animals that He has provided for them (i.e. slaughter them)." [Surah alHajj ayat 28]

وَلِكُلِّ أُمَّةٍ جَعَلْنَا مَنْسَكًا لِّيُذَكَّرُوا اسْمَ اللَّهِ عَلَىٰ مَا رَزَقَهُمْ مِنْ بَيْهِيْمَةٍ
الْأَنْعَامِ (٢٢:٢٨)

"And for every community We have appointed a rite of sacrifice that they may mention the name of Allah over the animals that He has provided them (i.e. slaughter them)." [Surah alHajj ayat 34]

فَاذْكُرُوا اسْمَ اللَّهِ عَلَيْهَا صَوَافٍ (٣١:٤١)

"Then pronounce the name of Allah on them (the camels) while you make them stand (i.e. slaughter them)." [Surah alHajj ayat 36]

فَكُلُوا مِمَّا ذُكِّرَ اسْمُ اللَّهِ عَلَيْهِ (الأنعام: ١١٨)

"Then eat on which the name of Allah has been pronounced (i.e. which has been slaughtered by pronouncing the name of Allah over it)."

[Surah alAn'am ayat 118]

وَلَا تَأْكُلُوا مِمَّا لَمْ يُذَكَّرَ اسْمُ اللَّهِ عَلَيْهِ (الأنعام: ١٢١)

"And do not eat of that upon which the name of Allah has not been mentioned (i.e. which has been slaughtered without pronouncing the name of Allah over it)" [Surah alAn'am ayat 121]

The repeated use of this phrase for the act of slaughter is clear evidence of the fact that the Qur'an considers slaughter synonymous with the pronouncement of Allah's name over the animal. No valid act of slaughter can be imagined without the pronouncement of Allah's name, and the pronouncement of Allah's name is an essential component of slaughter.

Now let us look at the authentic aHadith and see what status has been accorded to the pronouncement of Allah's

name for the validity of the slaughter. Adi bin Hatim, the son of renowned philanthropist Hatim Tai, has enquired extensively from the Prophet ﷺ on the topic of hunting animals. The injunctions the Prophet ﷺ related to him are as follows:

اذا ارسلت كلبك فاذكر اسم الله فان امسك عليك فادرسته حيا
فاذبحه و ان ادرسته قد قتل ولم ياكل منه فكله --- و اذ رميت
سهمك فاذكر اسم الله (بخارى ومسلم)

"Take Allah's name when you release your dog to hunt. If your dog has held the prey for you and you find it alive, then slaughter it. And if you observe that the dog has already killed it but has not eaten anything from it, then you can eat it.... And take the name of Allah even when you release your arrow on the prey."

[Bukhari and Muslim]

وما صدت بقوسك فذكرت اسم الله عليه فكل وما صدت بكلبك
المعلم فذكرت اسم الله عليه فكل-

"You can eat the animal that you have hunted with an arrow when have taken the name of Allah over it. You can also eat the animal that you have hunted by means of your trained dog when have taken the name of Allah over it."

امرر الدم بم شئت واذكر اسم الله- (ابوداؤد، نسائي)

"Bleed the animal with the instrument of your choice and take the name of Allah over it."

[Abu Dawood, Nisai]

ما علمت من كلب او باز ثم ارسلته و ذكرت اسم الله عليه فكل مما
امسك عليك- (ابوداؤد، احمد)

"If you have a trained dog or falcon and you release it to hunt the prey, taking the name of Allah while doing so, then you can eat the animal it holds for you."

[Abu Dawood, Ahmad]

Adi bin Hatim (God be pleased with him) says that I asked the Prophet ﷺ, "If I take the name of Allah and release my dog, but when I approach the prey I notice one more dog standing next to it, and it becomes difficult to ascertain which of the two dogs has killed the prey, then what should be done? The Prophet replied,

فلا تأكل فانما سميت على كلبك ولم تسم على غيره

(بخاری، مسلم، احمد)

"Do not eat it. You had taken Allah's name on your own dog, not on the other dog."

[Bukhari, Muslim, Ahmad]

These clear and explicit commands issued by God and His Messenger leave no room for any doubt that the Shariah regards the pronouncement of Allah's name as a prerequisite for the validity of the slaughter, and it is impermissible to eat the animal which has been killed without taking the name of Allah. If even such clear and explicit ayaat and aHadith are considered insufficient to substantiate a command, then, pray, what exactly is the criteria and standard required to substantiate a command?

The rulings of the Jurists on the issue of pronouncing Allah's name over the animal while slaughtering it.

The Hanafi, Maliki and Hanbali scholars are unanimous that it is impermissible to eat of the animal on which the name of Allah has deliberately been skipped; there is no harm, however, if this has been unintentional (i.e. the person slaughtering the animal forgot to take the name of Allah). The same opinion has been expressed by Syedna Ali, Ibn Abbas, Saeed bin alMusayyib, Zuhri, Ata', Taus, Mujahid, Hasan Basari, Abu Malik, Abdur Rahman bin Abi Laila, Ja'afar bin Muhammad and Rabia bin Abi Abdur Rahman.

Another group says that eating the animal would stand forbidden if the name of Allah has not been pronounced

during the slaughter- irrespective of whether this has been done deliberately or because of a slip of mind. This view is held by Ibn Umar, Naf'e, Sha'bi and Muhammad bin Sireen, and the same has been accepted by Abu Thaur and Dawood Zahiri. Ibraheem Nakhi' says that if the pronouncement of Allah's name has been skipped because of a slip of mind, eating the animal would be *makrooh tahreemi* (extremely disdainful).

Imam Shafi'i, on the other hand, says that pronouncing Allah's name over an animal is not a prerequisite for the validity of the slaughter at all. He says that although taking the name of Allah while slaughtering an animal is indeed a legally recognized procedure and part of Sunnah, the slaughter would remain valid even if the pronouncement of Allah's name is omitted- whether deliberately or unintentionally. Only Abu Hurairah from among the Companions and Imam Awzai from among the Jurists held this opinion. Although this opinion has also been attributed to Ibn Abbas, Ata' bin Abi Rabah, Imam Ahmad and Imam Malik in certain reports, this was not the opinion they have known to hold.

The arguments presented by Shafi'i scholars to support their opinion and the weak points thereof:

The first argument presented by Shafi'i scholars is that in the 121st ayat of Surah alAn'am, وَلَا تَأْكُلُوا مِمَّا لَمْ يَذْكُرْ اسْمَ اللَّهِ عَلَيْهِ، وَإِنَّهُ لَفِشْقٌ ۖ “Do not eat that upon which the name of Allah has not been mentioned, for indeed, it is *fisq*”, the word ‘wa’ (that has been translated here as ‘for’) should not be understood to be a conjunction, because that would not be eloquent enough. This is because the first clause of this ayat is a *jumla felia inshaiyah* (verbal subordinate clause or, simply, verbal sentence) while the second clause is an example of *mubtada-khabar* (subject-predicate). A conjunction cannot be used to link such grammatically varying clauses. On the basis of this argument, they

consider this 'wa' to denote a condition, and then translate the sentence as, "Do not eat that upon which the name of Allah has not been mentioned while it is *fisq*". They then go on to explain this '*fisq*' by citing the 145th ayat of Surah alAn'am in which it is said, *أَوْ يَضَعُ أَوَّلَ يَتَعَرَّ اللَّهُ بِهِ* "... or if it is *fisq*, dedicated to a deity other than Allah". They thus conclude that the 121st ayat actually means, "Only that animal is forbidden that has been slaughtered in the name of a deity other than Allah. The mere fact that the name of Allah has not been pronounced on the animal while slaughtering it does not make it impermissible".

But this is an extremely weak interpretation that can be rejected on a number of firm grounds.

The first point is that the plain and obvious meaning of this ayat that is apparent on first sight is not at all the one that has been derived from this interpretation. A person reading this ayat would never take this meaning from it. Such a meaning can be carved out from this ayat only when the person reading it has decided beforehand that the animal which is slaughtered without taking the name of Allah *has* to be declared permissible.

Secondly, if it is grammatically incorrect to use a conjunction between a verbal sentence and a subject-predicate form of sentence, then using words like '*inna*' and '*la*' to express an emphasis in such a sentence should also be against eloquence, right? Had Allah indeed intended to say what Imam Shafi'i says, He would have said "*wa hua fisq*" (while it is *fisq*) instead of saying "*wa inna hu la fisq*" (while verily it is indeed *fisq*).

The third point is that in a desperate bid to vindicate their argument, these people did not even care to read the entire ayat before claiming that using a conjunction between a verbal sentence and a subject-predicate form of sentence goes against eloquence. The entire ayat is as follows:

وَلَا تَأْكُلُوا مِمَّا لَمْ يُذْكَرْ فِي الْكِتَابِ إِنَّ الشَّيَاطِينَ لَيُوحُونَ إِلَى أَوْلِيَهِمْ
لِيَجْادِلُوا بَيْنَكُمْ وَإِنْ أَطَعْتُمُوهُمْ إِنَّكُمْ لَمُشْرِكُونَ (الأنعام: ١٢١)

"And do not eat that upon which the name of Allah has not been mentioned, for indeed, it is fīsq. And indeed do the devils inspire their allies to dispute with you. And if you were to obey them, you would indeed be polytheists."

In this ayat, even if the 'wa' of 'wa innahu la fīsq' is taken to denote a condition, you would not get rid of the problem of having a conjunction between a verbal sentence and a subject-predicate form of sentence. This is because the sentence that follows is definitely a predicate, and it cannot be made a condition in any way, and its conjunction is inadvertently connecting the verbal subordinate clause that precedes it.

Moreover, this is not the only place where a verbal sentence is conjoined with a subject-predicate form of sentence; several such examples abound in the Qur'an. For instance, the 4th ayat of Surah anNoor reads: لَا جُنْدٌ لَهُمْ قَبْلَهُ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ عَهْدَ آبَدٍ وَأُولَئِكَ هُمُ الْفَاسِقُونَ (النور: ٣) "Lash them with eighty lashes and do not accept their testimony ever after, and those are the defiantly disobedient". Similarly, we have the 221st ayat of Surah alBaqarah which reads, وَلَا تُنْكِحُوا الْمُشْرِكَةَ حَتَّى تُؤْمِنَ وَلَا مِمَّا الْمُؤْمِنَةُ حَتَّى يُؤْمِنُوا وَلَعَلَّكَ مَرْغُوبٌ مِمَّنْ يَمْنُونَ الْبَغْيَ وَلَا تُنْكِحُوا الْمُشْرِكِينَ حَتَّى يُؤْمِنُوا وَلَعَلَّكَ مَرْغُوبٌ مِمَّنْ يَمْنُونَ الْبَغْيَ (البقرة: ٢٢١) "And do not marry polytheistic women until they believe, and a believing slave woman is better than a polytheist, even though she might please you. And do not marry polytheistic men until they believe, and a believing slave is better than a polytheist even though he might please you".

Now you should either redefine your parameters of eloquence or openly claim that the Qur'an lacks eloquence, for it would not be possible for you to change the status of 'wa' from a conjunction to a condition in every such ayat

where it appears between a verbal sentence and a subject-predicate form of sentence.

The fourth point is that the interpretation you have come up with gives the following meaning to the ayat: "Do not eat that upon which the name of Allah has not been mentioned while verily it is indeed *fisq* that the name of a deity other than Allah has been mentioned on it". The question that arises is that if the actual objective was to convey the impermissibility of the animal that is slaughtered in the name of a deity other than Allah, then does that not render the first part of the ayat absolutely meaningless, futile and unimportant? For if that was indeed the case, is it not absurd to say 'Do not eat that upon which the name of Allah has not been mentioned'? This objective would have been achieved by simply saying, 'Do not eat that upon which the name of a deity other than Allah has been taken'. Can any sane person amongst you provide any explanation as to why this clause, لَا تَأْكُلُوا مِمَّا نَدْرَأَ بِكُمْ نَافِلًا وَلَا تَأْكُلُوا مِمَّا نَدْرَأَ بِكُمْ نَافِلًا وَلَا تَأْكُلُوا مِمَّا نَدْرَأَ بِكُمْ نَافِلًا وَلَا تَأْكُلُوا مِمَّا نَدْرَأَ بِكُمْ نَافِلًا وَلَا تَأْكُلُوا مِمَّا نَدْرَأَ بِكُمْ نَافِلًا 'Do not eat that upon which the name of Allah has not been mentioned' was inserted in the first place?

The fifth point is that even if the 'wa' is taken to denote a condition instead of a conjunction, there is no reason why we should borrow the meaning of the word *fisq* used here from an ayat four pages away. Why should we not, instead, go with the dictionary meaning of *fisq*- 'grave disobedience'? In that case, the clear and straightforward meaning of the ayat would be: "Do not eat the meat of the animal upon which the name of Allah has not been mentioned while it is *fisq* (i.e. the person has deliberately refrained from taking the name of Allah while slaughtering the animal. This is because the word *fisq* is used for a deliberate act of disobedience and not when the person has committed an unintentional mistake because of a slip of mind). This interpretation is worth giving precedence over the interpretation adopted by Shafi'i scholars, for not only is it in accordance with all the ayaat and aHadith that we have on this issue, it also saves an entire clause of the ayat

لَا تَأْكُلُوا مِمَّا لَمْ يُذَكِّرْ اِسْمُ اللّٰهِ عَلَيْهِ (‘Do not eat that upon which the name of Allah has not been mentioned’) from being rendered meaningless.

The second argument presented by Shafi’i scholars is that a group of people submitted to the Prophet ﷺ that “Some people (who had recently accepted Islam) belonging to another town come to our market to sell meat. We have no idea whether they pronounce the name of Allah while slaughtering the animal or not. Can we consume that meat?” The Prophet replied, *سموا عليه انتم و كلوا* “Take the name of Allah over it and eat it”. This Hadith has been recorded in Bukhari, Abu Dawood, Nisai and Ibn Majah on the authority of Lady Aishah. This has led the Shafi’i scholars to conclude that pronouncing the name of Allah at the time of slaughter is not compulsory. They reason that had it been compulsory, the Prophet would not have given them permission to eat a doubtful piece of meat.

This Hadith, however, goes against their case. It only shows that the pronouncement of Allah’s name over the slaughter being a prerequisite for the permissibility of the meat was well recognized by the Muslims of the Prophetic era. This was exactly why they ran to the Prophet to enquire about the meat that was being sold by those newly reverted Muslim villagers. Why else would this question have arisen and why else would they have felt the need to ask the Prophet about it? Moreover, the reply the Prophet gave them further substantiates their view. Had their view been mistaken, and had the pronouncement of Allah’s name or the lack thereof been inconsequential as far as the permissibility of the meat so slaughtered was concerned, the Prophet would have clearly told them that pronouncing Allah’s name at the time of slaughter is not a prerequisite for the meat to be permissible, you are free to eat whatever meat comes your way, regardless of whether Allah’s name has been pronounced over the animal or not. Instead, what the Prophet actually told them was that they should

themselves take the name of Allah and eat it. The apparent meaning of this statement that every person would understand upon reading this Hadith is that if a Muslim person slaughters an animal, you should harbour a positive assumption that he must surely have abided by the proper procedure in slaughtering the animal and you should eat it with a heart free of suspicion. But if you are still in doubt, then take the name of Allah before eating it. It goes without saying that it is practically impossible for a person to ascertain the validity of each and every piece of meat that is sold in the butcher shops of towns and cities, nor does the Shariah ask him to investigate whether the animal that was slaughtered was permissible or not, whether the proper procedure of slaughter was followed or not, whether the butcher is a new Muslim or an old one and whether or not he is acquainted with all the rules of slaughter. A person should give every Muslim the benefit of doubt and should accept his things on face value unless there is clear evidence to the contrary. Instead of making every baseless and unfounded doubt the basis of abstention, such doubts should be cast away by saying *bismillah* or *astaghfirullah*. This is the lesson we learn from this Hadith. This Hadith does not prove that pronouncing the name of Allah is not necessary for the slaughter to be valid- period.

Another weak argument is presented on the basis of a *mursal* narration (i.e. the narration whose chain of narrators jumps from a Tabi'i to the Prophet without providing the name of the Companion from whom it has been narrated... Translator) recorded by Abu Dawood, in which the Prophet says, "It is permissible to eat of the animal slaughtered by a Muslim, irrespective of whether he has taken the name of Allah while slaughtering the animal or not. For, even if he does pronounce a name, it would be Allah's". First of all, this Hadith is a *mursal* report attributed to an unfamiliar Tabi'i. Such a Hadith can never be cited against other much stronger aHadith and several ayaat of the Qur'an that prove the contrary. Even if this Hadith happens to be authentic, it

should be seen if it really proves that it is not necessary to pronounce the name of Allah while slaughtering an animal. The most that can be derived from this Hadith is that if a Muslim person has slaughtered an animal without pronouncing the name of Allah, it should be regarded as an unintentional slip of mind and not a deliberate act of omission. It should be conceded that if he would have taken any name, it would be that of Allah, not that of anyone else. The animal he has slaughtered should, on this presumption, be considered permissible and consumed. How can this narration be cited to argue that the act of slaughter of those people who never pronounce the name of Allah and whose ideology and creed is completely against it is also valid, or that it is altogether unnecessary to pronounce the name of Allah while slaughtering the animal? No matter how many parentheses are inserted in this Hadith, it would not convey this meaning.

This is the truth of the arguments presented by Shafi'i scholars to claim that pronouncing the name of Allah is not necessary for the validity/permissibility of the slaughter. While it is possible for a person who is adamant upon blindly following them to believe in these arguments, I do not suppose a person who critically analyses them would ever prefer them over the arguments that prove that the pronouncement of Allah's name over the animal is compulsory for the validity of the slaughter.

The Qur'an and the Hadith have laid down the following conditions for the meat of an animal to be permissible for consumption:

1. The animal should not belong to the list of animals that God and His Messenger have outright prohibited.
2. The animal should be duly slaughtered.
3. The name of Allah should be pronounced over the animal while slaughtering it.

The meat that does not fulfil these conditions would be omitted from the list of '*tayyibaat*' (good foods) and

enlisted under those '*khabais*' (impure foods) which are forbidden upon a believer.

The issue of the animals slaughtered by the People of the Book

Now let us see what instructions have been revealed in the Qur'an and the Sunnah that are specific to the meat of the animal slaughtered by the People of the Book.

الْيَوْمَ أُحِلَّ لَكُمُ الطَّيِّبَاتُ وَطَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ حِلٌّ لَكُمْ وَطَعَامُكُمْ حِلٌّ لَهُمْ (المائدة: ٥)

"This day all tayyibaat (good foods) have been made lawful, and the food of those people who were given the Book is lawful for you and your food is lawful for them."

[Surah alMaidah ayat 5]

This ayat makes it clear that from among the foodstuffs that are served on the dining table of the People of the Book only those foodstuffs are permitted to us that belong to the list of *tayyibaat*. This does not mean- and nor can it even be expected to mean- that those things that the Qur'an and authentic aHadith list down as *khabais*, those things that we can neither eat in our own homes nor in the homes of other Muslims nor present to others become permissible for us if they are dished out on the dining tables of Jews and Christians. If someone discards this straight and clear interpretation, he can at best come up with one of these four plausible interpretations:

1. This ayat abrogates all those ayaat of Surah anNahl, Surah alAn'am, Surah alBaqarah and Surah alMaidah which deal with permissible and forbidden foods. In other words, this is an ayat that not only permits killing by strike, but it also permits the consumption of dead meat, pork, blood and meat dedicated to a deity other than Allah- all at once. But no evidence of this abrogation- either logical or documented- can ever be presented. The biggest proof of the futility of this claim is that all the three conditions that we have mentioned above can be found in this very Surah, in the same

context and they immediately precede this ayat. Is there any sane man who can then claim that the third clause of a set of three successive clauses would ever abrogate its preceding two clauses?

2. This ayat abrogates only the conditions of duly slaughtering the animal and pronouncing Allah's name during the slaughter; the consumption of dead meat, pork, blood and meat dedicated to a deity other than Allah continue to remain forbidden. But we do not understand on what sound basis this distinction has been made, abrogating two conditions and retaining the rest. If any person has any argument in its support let him present it.
3. This ayat makes a distinction between the table-spread of Muslims and that of the People of the Book. While all those dietary restrictions that have been mentioned at various places in the Qur'an would be retained on the dining table of Muslims, they would all be done away with on the dining table of Jews and Christians and we would be free to eat whatever they serve us. The most that can be said in support of this interpretation is that God already knew what the People of the Book eat. When He has allowed us to eat their food, it means that we are allowed to eat whatever they eat, regardless of whether it is pork or dead meat or the meat dedicated to a deity other than Allah or the meat of the animal that has been killed by a blow. But this argument is repudiated by the same ayat from which this argument has been derived. It is clearly stated that even on the dining table of the People of the Book, you can eat only those foodstuffs that come under *tayyibat*. Moreover, the list of *tayyibat* has not been suspended in ambiguity. The preceding two ayaat make it very clear what *tayyibat* exactly stands for.
4. Of all the food served by the People of the Book, only pork cannot be consumed. Or only pork, dead meat, blood and meat dedicated to a deity other than Allah

cannot be consumed, but we can consume the food served to us that has not been duly slaughtered or the one on which the name of Allah has not been taken during the slaughter. However, this argument is as lame as the second one. It is just a hollow claim, and no logical or documented proof can be cited to substantiate it. On what basis has this distinction been made between Qur'anic injunctions? How and why does one restriction remain valid on the dining table of Jews and Christians while the others stand exempted? If this distinction and exception has been derived from the Qur'an and the Hadith then the appropriate references should be provided. And if there is a logical argument in its favour kindly present that.

The Jurists' ruling on the slaughter of the People of the Book:

The Hanafi and Hanbali scholars rule that we are bound by the same dietary restrictions on the dining table of the People of the Book that the Qur'an and Sunnah have mentioned for our own homes. If an animal has not been duly slaughtered by taking Allah's name over it, neither can we eat its meat in our own homes, nor can we consume such meat served by the Jews and Christians [alFiqh alal Mazahib alArbah, Vol 1, Pages 726-730]

Shafi'i scholars aver that if Jews and Christians slaughter an animal in the name of a deity other than Allah, eating it is not permissible. However, if they slaughter the animal without taking Allah's name we are allowed to consume it. This is because the pronouncement of Allah's name is not considered a condition at all, neither for a Muslim, not for a non-Muslim [ibid, Vol 2, Page 23]. We have already discussed the errors in this ruling. There is no need to reiterate them here.

Although Maliki scholars consider it compulsory to pronounce the name of Allah while slaughtering the animal, they rule that this condition does not apply to the

People of the Book. It is permissible for us to eat the meat of the animal they slaughter even if they do not pronounce Allah's name over it [ibid, Vol 2, Page 22]. The only argument that is presented in its support is that during the Khaibar expedition the Prophet ﷺ had consumed the meat presented by a Jewess without asking her if the meat had been slaughtered in the name of Allah or not. However, this episode can be treated as an argument to support the exemption of the People of the Book from the rule of pronouncing Allah's name over the slaughtered animal only if it is conclusively proved that the Arabian Jews of that era used to slaughter their animals without taking Allah's name and that the Prophet ate the meat despite being aware of this practice of theirs. The mere fact that the Prophet ate that meat without enquiring whether the name of Allah had been pronounced over the animal or not is not a strong enough factor to exempt the People of the Book from this rule. It is quite possible that the Prophet might have known that his contemporary Jews pronounce the name of Allah while slaughtering their animals, which is why he ate the meat without any hesitation.

Ibn Abbas (God be pleased with him) is reported to have said that the 5th ayat of Surah alMaidah, طَعَامُ الَّذِينَ أُوتُوا الْكِتَابَ، 'The food of those who were given the Book is lawful for you' has abrogated the 121st ayat of Surah alAn'am, لَا تَأْكُلُوا مِمَّا عَلَىٰ نَفْسِهِ يَذْكُرُ اسْمَ اللَّهِ عَلَيْهِ، 'And do not eat that upon which the name of Allah has not been mentioned'. The People of the Book have thus been exempted from this rule [Abu Dawood, Kitaab alAdhahi]. But this is the personal interpretation of Ibn Abbas, because the chain of this Hadith does not reach the Prophet. Moreover, Ibn Abbas is the only person who has come up with this interpretation; no other Companion has concurred with him on this point. Also, he has not provided any proper argument in favour of his views to suggest why this ayat has abrogated the previous one and

why it has abrogated only this particular injunction and not the other dietary restrictions as well.

Ata', Awzai, Mak'hool and Lais bin Sa'ad believed that this ayat has removed the restriction over مَا أَهْلٌ لِّغَيْرِ اللَّهِ بِهِ 'that which has been dedicated to a deity other than Allah' [Surah alAn'am ayat 145]. Ata' insists that we can eat the meat of the animal that the People of the Book have slaughtered in the name of a deity other than Allah. Awzai says that you can eat the meat of the animal hunted down by the dog released by a Christian person even if you hear with your own ears that he had pronounced the name of Jesus Christ while releasing it. Mak'hool is of the opinion that there is no harm in eating the meat of the animal that the People of the Book sacrifice at their churches/synagogues or as part of their religious rituals [Ahkaam alQur'an alJassas, Vol 2, Page 395]. But the only argument in support of such a big claim is that 'God already knew that the People of the Book sacrifice their animals in the name of deities other than Allah and yet He has allowed us to eat the food of the People of the Book'. But God also knew that the Christians from the People of the Book ate pork and drank wine. Then why do you not derive the permissibility of pork and wine from the same ayat?

The only opinion I understand to be true and correct in this regard is the one presented by Hanafi and Hanbali scholars. If anyone wishes to follow the ruling of any other school of thought, let him do so at his own risk. As I have discussed above, the arguments they have given are so weak that they can hardly be cited to declare a forbidden entity permissible or declare something which is compulsory, optional. Hence, I cannot advise any sincere and pious person to rely upon these rulings and start eating the meat (of the animal killed by a blow) that is served in European and American countries.

Before I conclude, I would like to clarify two things:

It so happens at times that when a small animal like chicken or pigeon is slaughtered, a little carelessness can make the knife slip and cut the neck through and through, chopping off the head. One group of jurists has said that there is no harm in eating that animal in such a case. Now, making this the basis of their argument, certain modern day jurists have issued edicts that the condition of 'due slaughter' is fulfilled even in those cases where the standard procedure of slaughtering animals is that a machine chops off the head of the animal in a single stroke. But treating a juristic opinion as a source of reference and deriving injunctions from it that alter the proven and standard injunctions is not the right thing to do. We have already elaborated upon the Shariah's injunctions on slaughter in the preceding pages. We have also enlisted the source of reference of those injunctions. Now, if some jurists have allowed for certain concessions in an occasional but unintended act that nevertheless goes against the standard command, then it is no way appropriate to turn this concession into the principal command and, in the process, abrogate the injunction of duly slaughtering the animal that has been laid down by the Shariah.

The second thing is that the jurists have said, and rightly so, that 'there is no need to investigate into the details of each and every slaughter made by a Muslim, Jew or Christian to ascertain whether he has pronounced the name of Allah while slaughtering the animal or not'. However, if you do come to know that the name of Allah has deliberately been avoided while slaughtering an animal, you should refrain from consuming it. The above statement of the jurists has been used as an argument by certain people to claim that there is no need to investigate into the meat that is served in Europe and America. The animal has, after all, been slaughtered by someone from the People of the Book; eat it with the same certainty that you would eat the meat bought from the butcher shop of a Muslim in a Muslim country. But this argument would hold true only if

we are aware of a particular group or population belonging to the People of the Book that believes in slaughtering their animals in the name of Allah. As for those people about whom we know for sure that they do not care about these conditions of slaughter at all, and who do not believe that pronouncing or not pronouncing the name of Allah or any other deity has any effect on the permissibility of the animal so slaughtered, there is no reason why we should eat their meat with any certainty whatsoever.

Tarjumanul Qur'an
April 1959 CE

Fundamental Human Rights

This speech was delivered by Maulana Abul Ala Maududi at the Rotary Club, Lahore.

Fundamental Rights is not a novel concept

As far as Muslims are concerned, the concept of fundamental human rights is not a novel one. It is quite possible that for some people this concept dates back to the UNO Charter. For some others, it could be the English Magna Carta that was signed in 1215. But for us Muslims, this concept originated centuries earlier. But before I shed some light on fundamental human rights, I would like to briefly tell you what compelled human beings to come up with this concept in the first place.

Why Human Rights at all?

Actually it is quite interesting to note that in this entire world, human beings are the only ones who seek to define their own fundamental rights time and again. The other species that exist on this earth have had their rights granted to them by nature itself. They are getting those rights without having to deliberate over them. But man happens to be the only species whose rights stand in need of being defined and agreed upon.

It is equally interesting to note that no other species on earth is treating its co-species in the way man is treating man. Let alone members of its own species, what we see in the animal kingdom is that no animal attacks an animal of another species in the mere pursuit of leisure or authority.

If the law of nature has made one animal the food of another animal, the latter attacks the former for no other

reason than to fulfil its dietary requirements. There is no animal which simply keeps killing other animals after this requirement has been met. Why, the behaviour of animals towards members of their own species is also nowhere close to the behaviour that a man exhibits towards other men. This is probably an outcome of the honour and designation that God has accorded man with. It is due to the intellect and creativity that God has bestowed man with that he has adopted this unique attitude.

Lions have never formed any army. No dog has ever enslaved other dogs. No frog has oppressed other frogs. But when man began utilizing the strengths he had been given by God in complete disregard to the guidelines that He had sent with them, he began oppressing his own co-species. In the entire human history, all the animals would not have collectively killed as many human beings as human beings killed other human beings in World War II alone. This proves that man has no regard for the fundamental rights of other men. It is God alone who has guided man in this respect and has introduced the concept of human rights through his messengers. Actually, human rights can be defined by none other than the Creator of human beings. Hence, it is the Creator who has defined human rights in meticulous detail.

Development of Human Rights in the Modern era

Before discussing the clauses of Human Rights enshrined in the Islamic Constitution, let us run a glance over the development of human rights in contemporary times.

1. The Magna Carta that was issued by King John in the year 1215 CE was actually signed under the pressure of his Barons. This was an agreement between the King and his Barons, with most of its clauses favouring the interests of the Barons. It had got nothing to do with the rights of ordinary peasants. People of later times began

to interpret it in ways that would have stupefied the people who had originally drafted it. Lawyers of the 17th Century were somehow able to read that the right of Trial by Jury, right to Habeas Corpus and the right to exercise control over taxation were granted to the citizens of England by means of this document.

2. Tom Paine (1737- 1809) had published a pamphlet titled 'Rights of Man' which left a deep revolutionary influence on the minds of European people. This pamphlet, published in 1791 CE was instrumental in propagating the concept of human rights in Western countries. This person did not believe in divinely revealed religion. In any case, that age witnessed a surge of rebellion against divinely revealed religions. It is for this reason that Western ideologues came to believe that these religions are bereft of the concept of human rights.
3. The most outstanding feature of the French Revolution was the Declaration of Rights of Man, 1789. This was an outcome of 18th Century social philosophy and the Russian Social Contract Theory in particular. It affirmed sovereignty of man, liberty, equality and natural right to property. It also included the right to vote, the right of the public to exercise control over legislation and taxation, Trial by Jury etc. The Declaration of Rights of Man was designed by France's National Constituent Assembly during the French Revolution so that it could be included as a preamble to the proposed Constitution and that its spirit could be reflected in the Constitution.
4. The ten amendments to the United States Constitution have encompassed almost all those rights that were based on the British philosophy of democracy.
5. The American Declaration of the Rights and Duties of Man that was ratified at the 9th International American

Conference at Bagota in 1948 also deserves a mention here.

6. Then, in accordance with democratic principles, the United Nations Organization passed many positive and protective resolutions from time to time which finally took the form of the Universal Declaration of Human Rights.

In the year 1946, the General Assembly of the United Nations passed a resolution in which human genocide was declared a crime under International Law. In December 1948, 'The Convention on the Prevention and Punishment of the Crime of Genocide' was adopted by the UNO, which entered into force on the 12th of January 1951. In this Convention, genocide was defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- Killing members of the group;
- Causing serious bodily or mental harm to members of the group;
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group.

The Universal Declaration of Human Rights, which was passed on the 10th of December 1948, states in its Preamble that:

"The peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom."

Further, it stated one of its objectives as:

"Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms."

Similarly, The Charter of the United Nations (Chapter IX, Article 55) states that the United Nations shall promote 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'.

None of the member nations objected to any Article of this Declaration. This was because this Declaration touched upon nothing but general principles. No restriction was imposed on any particular country. This was not a pact or agreement which all signatory nations were required to abide by or by which they could be tried under International Law for dishonouring any of these Articles. It has been explicitly mentioned herein that this is an ideal standard that every member nation should strive to achieve. Yet, there were still some countries which abstained from voting for or against this Declaration. And we can all observe how these fundamental human rights are being violated right under the nose of this Declaration. Why, they are being violated by the same 'civilized nations' that were so desperate to have it passed.

This short background makes it clear that the concept of human rights in the West does not go beyond a couple of centuries. Moreover, even today, these charters do not have any authority vested with them or any power to have them sanctioned. They are nothing more than a pleasant dream. In contrast, the Charter of Human Rights that has been enshrined in the Qur'an and which has been elaborated upon by the Prophet ﷺ on the occasion of his Farewell Hajj not only predates these Western charters, it is also binding upon the Muslim community in the form of their doctrine, their set of values and their very religion. Also, we have had several exemplary examples of the implementation of

these rights by the Prophet ﷺ and the Rightly Guided Caliphs (God be pleased with them all).

I would now discuss those rights that human beings have been given by Islam:

The Right to Life

The Qur'an mentions the first incident of murder in human history. This was also, thus, the first instance where man had to be educated about honouring human life. He had to be told that every human being has a right to live. Immediately after recalling this incident, the Qur'an says,

مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ
جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ جَمِيعًا (المائدة: ٣٢)

"If anyone killed a person- unless it is (as a punishment) for murder or for spreading mischief in the land- it would be as if he killed the entire mankind. And if anyone saved a life, it would be as if he saved the life of the entire mankind."

[Surah alMaidah ayat 32]

In this ayat, the Qur'an has called the murder of one person the murder of the entire mankind and has equated the saving of one life with saving the life of all the people on earth. The word '*ahya*' used in the Qur'an actually means 'giving life'. This means that if a person puts in his efforts to save someone's life, he has actually granted him life. This effort is such a virtuous gesture that it has been equated with granting life to the entire mankind. The only two exceptions to this rule are:

1. A person has been convicted of murder and he is killed as a punishment.
2. A person spreads corruption on earth and he is killed as a punishment.

It is forbidden upon man to take the life of any other man in the absence of these two exceptional cases.¹

This Right to Life had been communicated by God at the very outset of human history. It is erroneous to assume that mankind began in darkness and ignorance and that after ages of killing each other, it finally dawned upon man one fine day that it is wrong to kill other human beings. This assumption owes itself to a negative perception of God. The Qur'an informs us that He has been guiding man right from day one and it is part of this guidance that He has informed man of the rights other men have over him.

The Protection of the Weak and Helpless

The second thing that finds mention in the Qur'an and has been expounded upon by the Prophet ﷺ is that under no circumstance should the women, children, elderly, wounded and sick people be harmed- irrespective of whether they belong to our own community or the enemy camp- provided they are not actively fighting in the battlefield. This rule is not exclusive for members of our own community; the same rule would apply for all mankind. The Prophet has laid down very clear guidelines in this regard. The Rightly Guided Caliphs were so particular about this that whenever they used to dispatch troops against the enemy, they used to issue clear instructions to the military that they should refrain from targeting women, children, elderly, injured and sick people.

The Protection of Dignity of Women

Another fundamental right that the Qur'an mentions and the aHadith explain is that the dignity of women is sacrosanct under all conditions. This means that even if an

¹ The 33rd ayat of Surah Bani Israil, (بنی اسرائیل: ۳۳) "لا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ" *"And do not take life- which Allah has made sacred, except for just cause"* should also be studied in this regard.

enemy woman is encountered on a battlefield, a Muslim soldier is not allowed to violate her dignity. The Qur'an prohibits immodest behaviour, regardless of who the woman is- Muslim or non-Muslim, belongs to our own community or a foreign one, is a member of our allied nation or an enemy one.

Financial Security

A fundamental principle is that every hungry person deserves to be fed, every naked person deserves to be clothed and every wounded and sick person deserves to be treated- irrespective of whether that hungry, naked, wounded or sick person happens to be a friend or a foe. We would feed, clothe and treat even our enemy.¹ This is a part of universal rights and it is also our moral responsibility.

Right to Justice

The Qur'an is very emphatic about treating each and every person with justice.

God says,

وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰٓ اَلَّا تَعْدِلُوْاۙ اَعْدِلُوْاۙ هُوَ اَقْرَبُ لِلتَّقْوٰى (النمل: ٨٠)

"O you who believe, stand out firmly for Allah as witnesses to fair dealing, and let not the hatred of a people prevent you from being just. Be just, that is closer to righteousness." [Surah alMaidah ayat 8]

In this ayat, Islam has laid down the principle that every man and every community should necessarily be treated with justice. Islam disdains the attitude of being fair with our friends but unfair with our enemies.

¹ وَلَٰٓيَ اَمْوَالُهُمْ حَتَّىٰ لِلسَّآٓئِلِ وَالْمَحْزُوْمِ (النمل: ١٩) *"And of their wealth is a recognized right for those who ask and the deprived"* [Surah adhDhariyaat ayat 19]

وَيُطْعِمُوْنَ الطَّعَامَ عَلٰى حُبِّهِ مِنۡ حُنِّهِمْ وَرَحْمَتِنَاۙ وَآٰسِنَا (النمل: ٨٠) *"And they feed the needy, the orphans and the captives for the love of Allah"* [Surah alInsan ayat 8]

Participation in Virtue and Abstention from Vice

Another principle advocated by the Qur'an is that we should assist others in acts of virtue and righteousness and keep ourselves from assisting them in acts of crime and injustice. We would not help even our own brother in sin, while our hand would extend out to even our enemy in contributing towards a good deed.

God says,

تَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ (المائدة: ٢)

"Cooperate in righteousness and piety, but do not cooperate in sin and aggression."

[Surah alMaidah ayat 2]

The word 'birr' used in this ayat also connotes delivering justice. This means that we should assist others in obtaining justice and in matters of piety. This is an unwavering principle of the Qur'an that cannot be compromised upon.

Right to Equality

The Qur'an is very explicit in pointing out that all human beings are equal. Superiority, if at all, is on the basis of his moral character. The Qur'an says,

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ

لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَىٰكُمْ (الحجرات: ١٣)

"O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you."

[Surah alHujurat ayat 13]

The first thing that we have been told is that we all have a common ancestry. All these variations in your race, colour and language should not be the basis of discrimination or distinction.

The second thing that is told here is that the only purpose of dividing us into different nations is that we may identify each-other. In other words, no community or tribe has any privilege over another community or tribe by which it could amass all rights for itself, depriving others of their rights. All these variations of facial features and languages are not meant to grant any special honour to anyone; rather, they have been created for the sole purpose of recognizing one from another. If all human beings would have been alike, recognizing one from another would have been impossible. Thus, this is a natural variation. It should not be used as an excuse to usurp the rights of others or to claim superiority over others. It is our character that decides our honour and prestige. The Prophet ﷺ has explained the same thing in another way. In his address following the conquest of Makkah, the Prophet had said,

لا فضل لعربي على اعجمي ولا لاعجمي على عربي ولا لاهمر على
اسود ولا لاسود على احمر الا بالتقوى ولا فضل للانساب-

"Neither does any Arab have any superiority over a non-Arab, nor does any non-Arab have any superiority over an Arab. Neither does any fair person have any superiority over a dark person, nor does a dark person have any superiority over a fair person- except for piety. There is no distinction on racial grounds."

This means that all distinction is on the basis of righteousness and piety. It is not that some people have been created of silver and others of stone and some others of clay. Rather, all human beings have been created equal.¹

¹ God condemns the Pharaoh's administration in these words: *إِنَّ فِرْعَوْنَ عَلَا فِي الْأَرْضِ وَجَعَلَ أَهْلَهَا شِيَعًا يَسْتَضِفُّ طَائِفَةٌ مِنْهُمْ (التقصم: ٣)* "Indeed, Pharaoh exalted himself in the land and made its people into factions, oppressing a section among them" [Surah alQasas ayat 4]. This shows that Islam does not support the social hierarchy of classifying men into superiors and inferiors or rulers and ruled.

The Right to Abstain from Sin

No person can be compelled to perform an act of sin. And if a person is commanded to do so, neither is it incumbent upon him nor is it permissible for him to follow such orders. As per Islamic law, if an officer commands his subordinate to perform an act of sin, it would be impermissible for the subordinate to obey him in that matter. The Prophet ﷺ has said, لَا طَاعَةَ لِمَخْلُوقٍ فِي مَعْصِيَةِ الْخَالِقِ "There is no obedience to the created in disobeying the Creator". No person has any right to command any person to perform those things that the Creator has forbidden and enlisted as a sin. Neither is it permissible to issue such a command, nor is it permissible for anyone to follow such a command.

The Right to Disobey an Unjust person

One of the most cherished principles of Islam is that no unjust person has any right to be obeyed. The Qur'an says that when God appointed Prophet Abraham a leader and told him, إِنِّي جَاعِلُكَ لِلنَّاسِ إِمَامًا (البقرة: 124) "I am going to make you a leader for the people", Prophet Abraham asked God وَوَعْدُكَ الْحَقُّ (البقرة: 124) if the same promise holds true for his descendants as well. God replied, لَا يَتَنَاَلُ عَهْدِي الظَّالِمِينَ (البقرة: 124) "My covenant does not include the wrongdoers." [Surah alBaqarah ayat 124]

The word 'covenant' has been used here in the sense of 'Letter of Authorization'. God is saying here that He has not given any letter of authorization to any wrongdoer by which he could command obedience from anyone.¹

¹ The following ayaat should also be paid heed to:

(الشورى: 151) وَلَا تُطِيعُوا أَمْرَ الْمُسْرِفِينَ ﴿١٥١﴾ "And do not obey the order of the transgressors" [Surah ashShu'ara ayat 151]

(الكهف: 28) وَلَا تُطِيعْ مَنْ أَغْفَلْنَا قَلْبَهُ عَنْ ذِكْرِنَا ﴿٢٨﴾ "Do not obey one whose heart We have made heedless of Our remembrance" [Surah alKahf ayat 28]

Accordingly, Imam Abu Haneefah says that no tyrant is entitled to be leader of the Muslims. And even if such a person does become the leader, the Muslims would not be under any obligation to obey him. He would, at best, be tolerated.

Right to involvement in politics

One important human right recognized by Islam is that all citizens are participants in the government. The nation would be governed by consulting all the people. The Qur'an says that *لَيَسْخَرَنَّهُمْ فِي الْأَرْضِ (النور: ٥٥)* "Allah has promised those who have believed among you and done righteous deeds that he would surely grant them *khilafat* (succession in authority) upon the earth" [Surah anNoor ayat 55]. Here, the plural form has been used. It is said that God would give authority to the entire nation, and not just to a few among the believers. Authority would not be vested in the hands of a particular individual or family or class. It would belong to the entire community. The government would be formed upon the consultation of all citizens. The Qur'an says, *... whose affair is (determined by) consultation among themselves* (النورى: ٣٨) "وَأَمْرُهُمْ شُورَى بَيْنَهُمْ (النورى: ٣٨)" [Surah ashShoora ayat 38]. This means that the government would be run by mutual consultation. Moreover, the Prophet has been instructed in the 159th ayat of Surah Aal'Imran to *وَشَاوِرْهُمْ فِي الْأَمْرِ (آل عمران: ١٥٩)* "consult them in the matter".

Caliph Umar has been very unequivocal on this matter. He says, "No one is entitled to rule over the Muslims without consulting them. The Muslims can be ruled only if they agree to it, not if they don't." Thus, Islam lays down

"Avoid Taghut" [Surah anNahl ayat 36] وَأَجْتَنِبُوا كُفْرًا مِمَّا قَدْ كَفَرُوا بِهِ سُبْحَانَ اللَّهِ عَمَّا يُشْرِكُونَ (النحل: ٣٦)

وَبَلَّغْ عَادَ بِأَنبِيَائِهِمْ وَعَصَوْا أَمْرًا كُلَّ جَبَّارٍ عَنِيدٍ (هود: ٥٩)

"And that was 'Aad, who rejected the signs of their Lord and disobeyed His messengers and followed the order of every obstinate tyrant"
[Surah Hud ayat 59]

the principle for a democratic consultative form of government. Unfortunately, we have been ruled by autocratic monarchs all throughout our history. Islam had never allowed us to have monarchies; rather, they have been a consequence of our own folly.

Right to Freedom

One more important principle is that no man's freedom can be unjustly snatched away from him. Caliph Umar had made it clear that لا يوسر رجل في الاسلام الا بحق 'Under Islam, no person can be unjustly apprehended'. This gives rise to the concept of Judicial Process of Law. This includes filing a proper charge sheet to annul someone's freedom, trying him in a court of law and allowing him all the options to defend himself. Any deviation from these steps would amount to injustice. It is common sense that an accused cannot be convicted without giving him an opportunity to defend himself. Islam does not have any room for a system in which a person can be arrested and locked up without giving him an opportunity to defend himself. The Qur'an has made it mandatory upon the Islamic government and judiciary to abide by the precepts of justice. وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ (النساء: ٥٨) "And when you judge between people, judge with justice" [Surah anNisa' ayat 58]

Right to Property

One of the basic rights in Islam is the individual's right to own property.

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ (البقرة: ١٨٨)

"Do not consume one another's wealth unjustly"

[Surah alBaqarah ayat 188]

A study of the Qur'an, Hadith and Islamic jurisprudence informs us about the unjust ways in which a person's wealth can be devoured. Islam has not left it ambiguous. No person's wealth can be taken away without

right. Even the government has not been authorized to illegally lay its hands on any citizen's property, transgressing upon the conditions that Islam has already enlisted.

Right to Dignity

It is the right of every person that his/her honour and dignity remains guarded. Surah alHujurat discusses this right in detail. For instance, (الأحزاب: ١١) 'Let not a people ridicule another people', (الأحزاب: ١١) 'Do not call each other by offensive nicknames', (الأحزاب: ١٢) 'Do not backbite each other'. These acts of libel have been mentioned in the 11th and 12th ayaat of Surah alHujurat, encompassing all those ways in which a person's dignity can be violated. No person can be ridiculed, called names or spoken ill of- whether in his presence or in his absence. It is the legal right of each and every person that he is protected from being dishonoured by others- by deed and by speech.

Right to Privacy

This right has been specified in the 27th ayat of Surah anNoor: (النور: ٢٧) "لا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا" "Do not enter houses other than your own until you take their permission to enter". The 12th ayat of Surah alHujurat says, (الأحزاب: ١٢) "لا تَجَسَّسُوا" "Do not spy on others". The Prophet ﷺ has said, 'No person has the right to peep into another person's house'. A person is legally entitled to being protected- secure in his house from external noise and chaos- from people peeping and spying into his house and the interference of other people. He should be able to live peacefully in his house without feeling intimidated. Why, no person has the right to even glance over another person's letter, let alone read it. The only exception is when it is confirmed from reliable sources that he is involved in some anti-social activity. If

this is not the case, Islamic law does not allow anyone to pry into the private affairs of others.

Right to Protest against Injustice

Islam recognizes the fundamental right of every person to stand up against injustice. The Qur'an says:

لَا يُحِبُّ اللَّهُ الْجَهْرَ بِالشُّؤْرِ مِنَ الْقَوْلِ إِلَّا مَن ظَلَمَ (النساء: ١٣٨)

"God does not like speaking evil in public except by one who has been wronged" [Surah an-Nisa' ayat 148]

This means that a person who has been wronged has the right to speak up against injustice.

Freedom of Speech and Expression

The Qur'an makes mention of the Freedom of Speech and Expression in a unique way; one is rendered awestruck at the approach adopted by the Qur'an in this regard. The Qur'an says that 'enjoining the right' and 'forbidding the wrong' is not only man's right, it is also his duty. كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ وَتَنْهَوْنَ عَنِ الْمُنْكَرِ (آل عمران: ١١٠) "You are the best nation produced for mankind. You enjoin what is right and forbid what is wrong." [Surah Aal-Imran ayat 110] The Qur'an and Hadith make it obligatory upon man to enjoin righteousness upon other men and forbid them from doing what is wrong. If there is something wrong happening, not only is he expected to speak up against it, he is also required to try and stop it. And this is not all. If a person witnesses a wrong taking place, he would be counted as a sinner if he neither speaks up against it nor shows any concern towards eliminating it. It is the duty of Muslims to preserve the sanctity of Muslim society. There can be no greater injustice than gagging the voice of a Muslim that he raises in this regard. If someone prevents another person from spreading goodness, he not only becomes guilty of usurping his fundamental right, but also of coming in the way of his duty. For a healthy society to flourish, it is

necessary that every citizen should have this right. While discussing the factors that led to the downfall of the Children of Israel, the Qur'an says, (المائدة: ٧٩) كَانُوا لَا يَتَنَاهَوْنَ عَنْ مُنْكَرٍ فَعَلُوهُ "They did not forbid each other from committing the abominable deeds they committed". [Surah alMaidah ayat 79]

This means that if there is a situation where not a single voice is being raised in the community against evil deeds, the nation eventually succumbs to widespread evil, turning into a bag of rotten apples that is thrown away as trash. There is nothing then that prevents such a nation from getting afflicted with divine punishment.

Freedom of Conscience and Belief

Islam has given us the principle of (البقرة: ٢٥٦) 'لَا إِكْرَاهَ فِي الدِّينِ' Let there be no compulsion in religion' [Surah alBaqarah ayat 256] and has thus given every person the freedom to choose his religion. Islam sanctions the use of force in only two conditions- armed struggle against the enemy for the defence and preservation of the Islamic nation in a state of war and during judicial proceedings against those who tend to violate the peace and security of a nation and give rise to law and order problems.

It was to attain this valuable freedom of conscience and belief that the Muslims bore atrocities and proclaimed the word of God even in the constrained environment of Makkah, a struggle that eventually bore fruit and this right of theirs came to be recognized. The Muslims saw to it that this right that they had obtained for themselves is made available to others also. Islamic history is bereft of a single episode where the Muslims have compelled their non-Muslim subjects to accept Islam or beaten someone into pronouncing the Islamic article of faith.

Right to Protection from Religious Insult

Reviling someone else's religion and abusing the religious leaders of other communities is not something that

Islam favours. The Qur'an has taught us to respect the creed and religious leaders of every human being. وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ (الانعام: ١٠٨) "And do not insult those they invoke other than Allah" [Surah alAn'am ayat 108]

While engaging in a healthy discussion with people belonging to various creeds and faiths on the basis of sound arguments and debating with them or expressing your dissent on their views comes under the ambit of 'Freedom of Speech and Expression', it is not permissible for anyone to hurl abuses or insult someone.

Right to Organize

It is quite logical for the 'Right to Organize' to follow the 'Freedom of Speech and Expression'. Given that the Qur'an has repeatedly acknowledged differences in opinion as being a part and parcel of human life, how can it be possible to prevent people who favour a particular opinion from coming together? There can even be several schools of thought within a single society that subscribes to the same principles and ideology, and it is but natural for the adherents of every such school of thought to share a close bond with each other.

The Qur'an says,

وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ (آل عمران: ١٠٤)

"Let there arise out of you a band of people inviting to all that is good, enjoining what is right and forbidding what is wrong". [Surah Aal' Imran ayat 104]

When 'good', 'right' and 'wrong' translate into practical life, there arise various schools of thought in a society despite being united in principle. And no matter how removed it might seem from the ideal, such an environment does lead to the formation of numerous groups and parties. Accordingly, we have had differences in

opinion in the fields of Islamic doctrine (scholastic theology), jurisprudence, law and political ideology, giving rise to various groups. What needs to be asked here is 'Does the Islamic Constitution and Charter of Human Rights allow people subscribing to varying moral and ideological values the right to organize?' Caliph Syedna Ali was faced with this question when the Khawarij raised their banner, and Syedna Ali acknowledged their right to organize. He told the Kharijites, "As long as you do not resort to the sword to force people into accepting your ideology, you have absolute freedom (to peacefully propagate your views)".

Freedom from being held liable for someone else's act

Under Islam, a person is accountable only for his own acts and crimes. He cannot be held liable for the acts and crimes of another person. The Qur'an says,

وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ (النعام: ١٦٣)

"No bearer of burdens shall bear the burden of another".
[Surah alAn'am ayat 164]

No action would be taken on the basis of doubt and suspicion

Islam secures every person from being prosecuted without trial and investigation. The Qur'an is quite explicit in instructing us to investigate every case that comes to us lest we initiate proceedings against someone without any certain knowledge.

وَلَوْ أَنَّهُمْ صَبَرُوا حَتَّى تَخْرُجَ إِلَيْهِمْ لَكَانَ خَيْرًا لَّهُمْ وَاللَّهُ عَفْوٌ رَحِيمٌ

(المجادل: ١٢)

"O you who have believed, if there comes to you a disobedient one with information, investigate, lest you harm a people out of ignorance and become, over what you have done, regretful." [Surah alHujurat ayat 6]

It has also asked us to اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ (المز: ١٧) "*avoid much [negative] assumption*". [Surah alHujurat ayat 12]

Conclusion

These are those fundamental rights that Islam has granted every human being. They are entirely absolute and unambiguous in nature, and have been conveyed to human beings right from the day man stepped foot on earth. It is worth noting that even today whatever declaration of human rights man has come up with has no authentic root source or authority. All that can be said is that a high and ideal standard has been presented before the world, with no country being under any obligation to act upon it whatsoever. There is no agreement that compels the member nations to comply with the declaration. On the contrary, the Muslims are duty-bound to follow the Book of God ﷻ and the guidelines of His Messenger ﷺ. God and His Messenger have clearly listed down all the fundamental rights. Those countries that wish to become Islamic states are compulsorily required to offer these rights to all their citizens- Muslim as well as non-Muslims. There is no clause here that states that we would simply reciprocate the favour of another community and give them only as many rights as they give us. The Muslims would *have* to give them those rights- to friends and foes alike.

Imam Abu Haneefah's ruling on the issue of Caliphate

Sovereignty

While discussion any political ideology, the first and foremost question is, 'To whom does it accord sovereignty?' Imam Abu Haneefah's view on the issue of sovereignty is none other than the widely recognized fundamental Islamic view- that God ﷻ is the True Sovereign, the Messenger ﷺ would be obeyed in the capacity of His representative and the law given by God and His Messenger is the supreme law which should compulsorily be obeyed and followed. Since the Imam was primarily a legal luminary, he has explained this issue in legal terms instead of resorting to the language of political science.

He says,

"Whenever I find a command in the Book of God, I adhere to it. And when I do not find it there, I abide by the Sunnah of the Prophet and the authentic example of the Prophet that has been transmitted from honest and reliable people and recognized by honest and reliable people. And if I do not find the command in the Book of God or the Sunnah of His Messenger, I follow the consensus of the Sahaba (Companions) of the Prophet. And if they have differed on an issue, I accept the opinion of one Companion and discard the opinion of another companion at my own discretion. But I do not reject the opinion of all the Companions to

*accept the opinion of someone else.... As for others, I have as much right to perform Ijtihad as they have."*¹

Ibn Hazam states,

*"All the companions of Imam Abu Haneefah unanimously agree that Abu Haneefah held that qiyas (analogical deduction) and expert opinion would be abandoned even if a weak-chained Hadith is obtained on a particular issue".*²

This makes it clear that he used to regard the Qur'an and Sunnah as the final authority. He believed that legal sovereignty belonged to God and the Messenger. He held that the scope of legislation by means of deduction and expert opinion was limited to only those cases where there is no divine or prophetic command in that regard. The reason he preferred the personal opinion of a Companion of the Prophet over those of others was that in the case of a Companion of the Prophet there was a possibility of his opinion being based upon some command of the Prophet ﷺ that he might have had knowledge of. The Imam therefore made sure that in case the Companions of the Prophet differed in their opinions on a particular issue, he would accept the opinion of one of them while ruling on a matter instead of forming an altogether new opinion of his own that differed from the opinions of all the Companions, because this could inadvertently lead to abandoning or going against a Sunnah. However, he did exercise his discretion to deduce whose opinion was closest to the Sunnah. Although there have been allegations on the Imam even during his lifetime that he used to prefer *qiyas* (analogical deduction) over *nass* (documented source/textually explicit legal statement), he had bluntly rejected such accusations by clarifying that, "By God, he who

¹ alKhateeb alBaghdadi, Tareekh Baghdad, Vol 13, page 368. alMakki, Manaqib alImam alAzam Abi Haneefah, Vol 1, page 89. alZahabi, Manaqib alImam alAzam Abi Haneefah wa Sahibiyah, page 2.

² alZahabi, page 21

accuses us of preferring *qiyas* over *nass* has lied and levelled against us a false charge. What is the need of *qiyas* when there is already a *nass* present?"¹

Caliph alMansoor once wrote to him, "I have been told that you prefer *qiyas* over Hadith". The Imam replied, "O Leader of the Believers, whatever has been told to you is false. I always act upon the Book of God first, then upon the Sunnah of the Prophet ﷺ, then upon the decisions of Abu Bakr and Umar and Usman and Ali, then upon the decisions of other Companions. However, if they differ among themselves, I resort to *qiyas*".²

The Proper Procedure of Nominating a Caliphate

The Imam was of the opinion that it is not at all appropriate to gain power and authority by force and then compel the public to pledge their allegiance to their rule. A proper Caliphate is one that is established by the opinion and consensus of opinion makers. The Imam voiced this opinion at a critical juncture when speaking such a thing was an open invitation to death. alMansoor's guard, Rabi' bin Yunus says that Mansoor summoned Imam Malik, Ibn Abi Ziab and Imam Abu Haneefah and asked them, "What is your opinion about this authority that God has granted me over this nation? Do I deserve it?" Imam Malik replied, "God would not have granted you this rule had you not deserved it". Ibn Abi Ziab said, "God grants the dominion of this world to whoever He wishes, but He grants the dominion of the hereafter to the person who desires it and to whom God gives the ability to attain it. This ability from God would be within your reach if you obey Him, and it would be removed from you if you disobey Him. The fact remains that the Caliphate is formed by the consensus of pious and God-fearing people, and there is no piety for a

¹ Ash'arani, Kitaab alMeezan, Vol 1, page 61, alMutba' alAzhariyah, Egypt, Edition II, 1925 CE.

² ibid page 62.

person who obtains it by force. You and your supporters are removed from that God-given ability and are at variance with truth and justice. Now, if you plead security from God and strive to gain His proximity by means of righteous deeds, you would be granted it. Otherwise, you are on your own (i.e. you are responsible for whatever befalls you)." Imam Abu Haneefah says that when Ibn Abi Ziab was saying this, I and Imam Malik became certain that his head would be chopped off any moment, so we gathered our cloaks to save them from getting stained by his blood.

After this, Mansoor looked towards Imam Abu Haneefah and asked him the same question. The Imam replied, "A person who seeks the right path in religion is free of anger and rage. If you introspect within, you would realize that you have not summoned us here for the sake of God. Rather, what you actually desire is that we should get subdued and toe your line and speak in your favour so that our consenting words can then be used to influence the masses. The fact of the matter is that not even two jurists have reached a consensus over the manner in which you have ascended to the post of Caliph; whereas the Caliphate ought to be an outcome of the consensus and consultation of the entire Muslim populace. Take Abu Bakr Siddiq for instance; he did not issue any order six months into his tenure until he received the pledge of allegiance from Yemen."

After this, all the three elders took his leave. After they had left, Mansoor gave Rabi' three bags of gold coins to have them delivered to each of these elders. He instructed him that if Imam Malik accepts the gold coins give it to him, but chop off the heads of Imam Abu Haneefah and Ibn Abi Ziab if they accept the bags. Imam Malik accepted the coins. When Rabi' approached Ibn Abi Ziab, he told him that he does not consider these coins legit for Mansoor, so considering them permissible for himself was out of question. Imam Abu Haneefah, on his part, said that he

would never accept those coins even if his head is chopped off as punishment. When Mansoor was told about the responses of the three elders, he said, "Their sense of independence (being free of want) saved their lives".¹

Eligibility Criteria for Caliphate

Until the age of Imam Abu Haneefah, the eligibility criteria for Caliphate were not expounded in detail in the way they have been discussed by later scholars like Mawardi and Ibn Khaldoon. This is because until that time, most of those conditions had remained undisputed and widely acknowledged. For example, the person should be a Muslim, a man, free, knowledgeable and should be physically and mentally sound. However, there were two things which were being discussed in that age and which required clarification- one, whether a tyrant person who disobeys Islamic law can be a valid Caliph or not, and second, whether the Caliph needs to belong to the Quraish tribe.

The Leadership of an impious tyrant

As for the first issue, the opinion of the Imam has two aspects which should be clearly understood. The age in which he presented his views on this topic was a time when Iraq (in particular) and the entire Muslim world (in general) were witnessing a serious clash between two extreme views. One side asserted that a tyrant and impious person (*fasiq*) can never be a Caliph. Neither would his Caliphate be valid, nor would any collective action of the Muslims taken under his rule be correct. The other side contended that once a tyrant and impious person comes to power and wields authority over the nation- irrespective of how he ascends to that position- his leadership and Caliphate become absolutely legitimate.

¹ alKardari, *Manaqib alImam alAzam*, Vol 2, pages 15-16.

Midway between these two extreme stands, Imam Abu Haneefah presented a balanced view which is as follows:

In alFiqh alAkbar, he writes,

"It is permissible to offer prayers behind every Muslim- whether he is righteous or not".¹

Imam Tahawi, while explaining this Hanafi creed in alAqidah alTahawiyyah, writes:

"And Hajj and Jihad would continue till the end of time under the leadership of the Muslims, irrespective of whether the leader is righteous or not. There is nothing that interrupts or invalidates these acts."²

This is one aspect of this issue. The second aspect is that the Imam considered justice to be a compulsory prerequisite for Caliphate. No tyrant or impious person can be a valid Caliph or judge or governor or jurist. If he becomes one by force, his leadership would be invalid and the people would be under no obligation to obey him. It is another matter altogether that the legitimate collective action taken by the Muslims under his forced rule would continue to remain valid. Also, the just verdicts issued by the judges appointed by him would be duly enforced.

This issue has been explained in detail by renowned Hanafi scholar, Imam Abu Bakr alJassas in the first volume of Ahkaam alQur'an. He writes:

"It is not permissible for a tyrant to be a prophet or the prophet's successor (khalifa), or judge or the bearer of any position that requires the public to accept his decisions in matters of deen, e.g. jurist or witness or narrator of a prophetic Hadith. The ayat, إِنَّكَ عِندَ الظَّالِمِينَ "My covenant does not include the zalimeen (wrongdoers/tyrants/oppressors)"³ proves that those who are leaders in matters of deen should

¹ Mulla Ali Qari, Sharah alFiqh alAkbar, page 91.

² Ibn Abi alIzz alHanafi, Sharah alTahawiyyah, page 322.

³ Surah alBaqarah ayat 124.

necessarily be just and righteous.... This ayat also proves that the leadership of a fasiq (impious, disobedient person) is invalid, he cannot be a Caliph. And if an impious person assumes the position of Caliph by force, the people are not required to obey or follow him.

The Prophet ﷺ has also said the same thing:

'There is no obedience to the created in disobedience to the Creator'.

This ayat also proves that an impious person cannot be a judge or magistrate. And if he does become one, his decisions would not be implemented. On the same lines, neither would the testimony of such a person be admissible, nor would his Hadith narrations be entertained. And if he happens to be a jurist, his edicts would not be followed."

Further down, alJassas states that this is the very ruling of Imam Abu Haneefah and goes on to explain in detail how unjust it is to accuse the Imam of vindicating the leadership of a *fasiq*:

"Some people have assumed that Imam Abu Haneefah consents to the leadership and Caliphate of an impious person... Even if we were to accept that this lie has not been deliberately spread, it is still a grave misunderstanding, which can be traced back to the statement of Imam Abu Haneefah that if a judge happens to be just and upright, his decisions would be duly implemented even if he has been appointed by a tyrant ruler, and a person's prayers would be held valid even if the prayer-leader happens to be an impious person. And this is not just the opinion of Imam Abu Haneefah, every Iraqi jurist worth his salt concurs with this stand. While there is nothing wrong in this stand per se, it cannot be cited to claim that

Imam Abu Haneefah considers the leadership of an impious person to be valid and permissible.”¹

Both, Imam Zahabi and alMuwafiq alMakki, have reproduced the following statement of Imam Abu Haneefah:

“The leadership of a person who misappropriates money from the public treasury or is cruel and unjust in his commands is invalid and the commands that he issues are wrong in principle.”²

These statements make it absolutely clear that contrary to the Khawarij and the Mu'tazilah factions, Imam Abu Haneefah used to differentiate between 'de jure' and 'de facto'. The stand adopted by the Khawarij and Mu'tazilah factions necessarily meant that in the absence of a just and righteous leader, the entire social and administrative system of the state would stand suspended. It would then not only become impossible to have judges or establish congregational prayers and courts of law it would also become impossible for the Muslims to properly carry out any religious, political or social activity. Imam Abu Haneefah seeks to solve this impasse by proposing that if a proper de jure leader is not available, then the entire social system of the Muslims would continue to run under any de facto leader of the Muslims, even if the leadership of that leader is not valid per se.

The other extreme view- that went diagonally opposite the view held by the Khawarij and Mu'tazilah- had been adopted by the Murhibah and even some scholars of the Ahle Sunnah school. Imam Abu Haneefah has saved the Muslims from falling for that view and the consequent effects of adopting that view as well. These people had also

¹ Ahkam alQur'an, Vol 1, pages 80-81. Shams alAimma Sarakhsi has also reproduced the same stand of Imam Abu Haneefah in alMabsoot, Vol 10, page130.

² alZahabi, Manaqib alImam Abi Haneefah wa Sahabiyah, page 17. alMakki, Manaqib alImam alAzam Abi Haneefah, Vol 2, page 100.

failed to draw a line between 'de jure' and 'de facto'. The validity they had accorded to the de facto leadership of a *fasiq* was at par with considering it de jure valid as well. This approach would necessarily have resulted in the Muslims calmly accepting the leadership of tyrants, oppressors and impious dictators. They would then have shown little concern towards changing it, leave alone struggling to do so. In order to correct this faulted stand, Imam Abu Haneefah quite vociferously advocated that the leadership of such an impious person would not be valid at all.

The condition of belonging to the Quraish tribe

As for the second issue, Imam Abu Haneefah held the view that the Caliph should necessarily belong to the Quraish tribe.¹ And this was the unanimous opinion of all the scholars subscribing to the Ahle Sunnah school.² This opinion should not be constructed to mean that the Islamic Caliphate is the exclusive constitutional right of some particular tribe. Rather, the actual reason can be attributed to the situation prevailing at that time where a Quraishi Caliph was required to maintain the unity of the Muslims. Ibn Khaldoon has elaborated that the principal backbone of the Islamic state at that time were the Arabs; and all the Arabs could have united only under the Caliphate of the Quraish. The risk of rebellion and disharmony in the event of choosing a non-Quraishi Caliph was so high that this would have endangered the very system of Caliphate.³ It is for this reason that the Prophet ﷺ has issued instructions that, "The Imam should be from the Quraish".⁴ For, had

¹ alMasawdi, Vol 2, page 192

² alShaharastani, Kitaab alMilal wa alNihal, Vol 1, page 106. Abdul Qahir alBaghdadi, alFarq bayn alFiraq, page 340.

³ Muqadma Ibn Khaldoon, pages 195-196.

⁴ Ibn Hajar, Fath alBari, Vol 13, Pages 93, 96, 97. Musnad Ahmad, Vol.3, pages 129 and 183, Vol 4, page 421. Musnad Abu Dawood

this post been legally forbidden on non-Quraishites, Caliph Umar would never have said, "Had Salim, the freed slave of Huzaifah, been alive, I would have appointed him my successor".¹ While issuing this instruction, the Prophet ﷺ had himself clarified that this position would remain with the Quraish as long as they continue to exhibit certain specific qualities.² It thus naturally follows that the Caliphate, in the absence of these qualities, can be held by a non-Quraishi as well. This is the core issue on which Imam Abu Haneefah and other scholars of the Ahle Sunnah school differ from the Khawarij and Mu'tizalah factions who not only insisted upon the validity of having a non-Quraishi Caliph, but went a step ahead and held that a non-Qurashi person is better entitled to be a Caliph than a person belonging to the Quraish tribe. They considered democracy to be of paramount importance, regardless of whether it leads to dissension and chaos. The scholars of the Ahle Sunnat wa alJama'at school, on the other hand, were as concerned about the stability of the Islamic state as they were about democracy.

State Treasury

One of the things the Imam disliked most about the Caliphs of his era was the way in which they splurged from the state treasury and usurped the property of the common citizens. According to him, being cruel in issuing commands and misappropriating money from the state treasury invalidate the leadership of a leader, as we have mentioned above on the authority of alZahabi. He even considered it impermissible for the Caliph to treat the official gifts he received from foreign missions as his personal property. The Imam averred that these gifts belong

atTayalisi, Hadith #926, 2133, published by Dairatul Ma'aroof, Hyderabad 1321 AH.

¹ alTabari, Vol 3, page 192.

² Ibn Hajar, Fath alBari, Vol 13, page 95.

to the public treasury and not the family lockers of the Caliph. He reasons that had he not been the Caliph of the Muslims and had the strength and progressive strides of the Muslim nation not made him a person of influence in the international community, no person would have come to his doorstep to offer him those gifts.¹ He also protested against the Caliphs' tendency to extravagantly spend and dole out gifts from the state treasury. This was one of the prime reasons why he used to refrain from accepting gifts from the Caliph. At a time when he had extremely strained relations with Caliph Mansoor, the latter had asked him why he refuses his gifts, at which the Imam had replied, "When has Thy Highness sent me gifts from his own property for me to have refused them? Had you sent me gifts from your personal property I would have definitely accepted them. You have instead sent me gifts from the public treasury, despite the fact that I have no claim over it. Neither am I defending the public to receive a soldier's allowance, nor am I any soldier's child to receive from their share, nor am I destitute enough to deserve alms²." Next, when Mansoor flogged him with thirty lashes for refusing to serve as a Judge and his entire body was drenched in blood, the Caliph's uncle, Abd asSamad bin Ali reprimanded him saying, "What have you done! You have drawn out a hundred thousand swords against you. He is the chief jurist of Iraq. Rather, he is the chief jurist of the entire East". Acknowledging his guilt, Mansoor sent him thirty thousand dirham (a thousand for each lash) as compensation. However, the Imam refused to accept it. He was advised to at least take it and spend it in charity. At this the Imam retorted, "Does he have any legitimate money at all³?" Soon after, weakened by the ceaseless atrocities he had had to bear, when the Imam was counting his final breaths, he instructed his followers not to bury him on a

¹ alSarakhsi, *Sharah asSeer alKabeer*, Vol 1, page 98.

² alMakki, Vol 1, page 215.

³ alMakki, pages 215-216.

land that Mansoor had annexed from the citizens to build the city of Baghdad. When Mansoor was told about this dying wish he shrieked out "O Abu Haneefah! Who can save me from your wrath- in life and in death?"¹

Independence of the Judiciary from the Executive

The Imam firmly believed that for the Judiciary to function properly not only should it be free from the pressure of the Executive, but the Judge should have the powers to sentence even the Caliph if he is found guilty of violating the rights of a citizen. Accordingly, in the final days of his life, when the Imam was certain that the ruling class would not leave him alive, he gathered his students and addressed them saying,

"If the Caliph were to violate human rights, the judge closest to him in rank (i.e. the Chief Justice) should sentence him".²

The principal reason why the Imam refused government posts, especially the judicial ones, during the Umayyad and Abbasid regimes was that he could see this point lacking in those regimes. Not only that there was no scope of bringing the Caliph to book under those two regimes, but he also feared that he would be used as a tool to perpetuate injustice- he would be coerced into delivering false verdicts and the Caliph and even his ministers would interfere with his decisions.

He was first coerced into accepting the post by the Umayyad governor of Iraq, Yazeed bin Umar bin Hubairah. This was in the year 130 AH, when there was widespread rebellion against Umayyad rule in Iraq, a storm that eventually blew away the Umayyad dynasty after two years. At this crucial juncture, Ibn Hubairah wanted to gain the support of Iraq's famed jurists and benefit from the influence they commanded among the masses.

¹ ibid, Vol 2, page 180.

² alMakki, Vol 2, page 100.

Accordingly, he offered important posts to Ibn Abi Laila, Dawood bin Abi alHind, Ibn Shubarmah and others. He then called Imam Abu Haneefah and told him, "I hand you my official seal. No command would be executed unless you put the seal on it and no money would be spent from the treasury without your consent." When the Imam declined his offer, he imprisoned him and threatened him with lashes. The other jurists advised the Imam to have mercy upon his self. "None of us is happy with our posts; we have accepted them under duress. We advise you to follow suit and accept his offer", said they. The Imam replied, "I would reject his job offer even if he were to ask me to count the doors of the masjid, leave alone the job he has offered me wherein he wants me to put the official seal on execution orders. I swear to God, I would never be an accomplice to this crime". Ibn Hubairah offered him other posts as well but the Imam kept declining them. He then decided to make him the Chief Justice of Kufa and resolved to flog him if he declines the offer this time around. Abu Haneefah, on his part, also resolved not to budge. He said, "It is easier for me to bear his lashes than bear the torment of the hereafter. By God, I would never accept his offer even if he kills me for my refusal". As a result, he rained down twenty to thirty lashes on his head. Some other narrations suggest that he used to flog him daily with ten lashes for ten to eleven days. But Imam Abu Haneefah stayed put. He was then informed that this person is on the verge of dying. He exclaimed, "Does he have no well-wisher who could convince him to pray for a reprieve?" When Imam Abu Haneefah was told about this, he asked them to leave him off so that he could consult his friends on this matter. Ibn Hubairah released him the moment he was told about this request. Thereupon, the Imam left Kufa for Makkah and did not return to Kufa until the Umayyad regime was toppled.

[alMakki, Vol 2, pages 21-24. Ibn Khalkan, Vol 5, page 41. Ibn Abdul Barr, *alIntiqa'*, page 171]

Next, during the Abbasid regime, alMansoor kept persuading him to accept the judicial post. The Imam had openly supported Nafse Zakiyyah and his brother Ibraheem against Mansoor in their uprising. This had made Mansoor develop a grudge against the Imam. AlZahabi says that he used to burn in rage against the Imam.¹ But apprehending a man of such influence was not an easy thing to do. He knew very well that the assassination of Imam Hussain had made the Muslims hate the Umayyad regime and how that misdeed of theirs ensured that they were so easily routed out. Hence, instead of killing him, he preferred to bind him in fetters of gold and use his services to meet his agenda. It was to meet this end that he kept offering him the post of Judge. Why, he even offered to appoint him the Chief Justice of the entire Abbasid Caliphate. But the Imam kept declining these posts under one pretext or the other.² But when he turned extremely persuasive, the Imam conveyed to him the reason behind his refusal upfront. On one such occasion, he declined the post in very humble words, "Only that person deserves to be a Judge who is audacious enough to implement the law against Your Highness, your princes and your commanders. I lack that audacity. Whenever you summon me, I get so nervous that I heave a sigh of relief only when I take your leave."³ At another such instance, there was a heated argument in which he told the Caliph, "By God, I would not be worth your confidence and trust even if I were to happily accept this post, leave alone accepting it with bitterness and under duress. If my decision goes against your interests in some matter and you threaten to plunge me in the Euphrates unless I retract my decision, I would prefer getting drowned instead of changing my decision. Then you have a lot of courtiers too.... You need a Judge who would have a soft corner for

¹ Manaqib alImam, page 30.

² alMakki, Vol 2, pages 72, 173, 178.

³ ibid, Vol 1, page 215.

them as well.”¹ When Mansoor was finally convinced that this person is not ready to fall for his golden trap, he resorted to unmasked vengeance. He flogged him with lashes, imprisoned him and kept him hungry and thirsty. Finally, he put him under house arrest where the Imam died a natural death (or as some claim, he was poisoned to death).²

Freedom of Speech and Expression

Apart from the freedom of the judiciary, the Imam believed that freedom of speech and expression was vital to an Islamic society and Islamic state, for which the Qur'an and Sunnah employ the terms 'enjoining the good' and 'forbidding the wrong'. Mere 'expression of one's opinion' may well be inadmissible or provocative; it can even be at variance with morality, honesty and humanity- something that no law can tolerate. However, forbidding the wrong and enjoining the good is *the* appropriate way of expressing one's opinion. Islam has adopted this terminology and- exclusive of all other forms of 'expression of views'- has mandated this particular form not only as a human right but also as a duty incumbent upon mankind. Imam Abu Haneefah was quite cognizant of this right and duty, for this right had been suspended by the government of his time and people did not seem inclined towards discharging this duty of theirs. It was a time when the Murhibah faction was inciting people to commit sin, while the Hashuya were of the view that performing the task of 'enjoining good and forbidding evil' against the government amounts to rebellion. Also, the Umayyad and Abbasid governments were busy crushing the Muslims' spirit of raising their voice against the iniquities and tyranny of the ruling class. This inspired the Imam to revive this spirit by his words and actions and specify its limits. alJassas says: The Imam,

¹ ibid, Vol 2, Page 170. alKhateeb, Vol 13, Page 328.

² ibid, Vol 2, pages 173, 174, 182. Ibn Khalkan, Vol 5, page 46. alYafi', Mir'at alJinan, page 310.

while replying to Ibraheem alSaigh (a renowned and influential jurist from Khurasan), said that "Enjoining the right and forbidding the evil is an obligation. He then narrated a Hadith on the authority of Ikrimah (who narrated from Ibn Abbas) which says: The best of martyrs is Hamzah bin Abdul Mutallib, and he who stands before a tyrant ruler and tells him a righteous word and forbids him from committing wrong and is killed for doing so". This reply had such a profound effect on Ibraheem that when he returned to Khurasan, he publicly reprimanded the founder of the Abbasid Caliphate, Abu Muslim Khurasani (d. 136 AH/ 754 CE) for his tyranny and cruelty and the unjust bloodshed he had indulged in. And he did this several times, to the point that he was eventually assassinated for doing so.¹

Ibraheem bin Abdullah, the brother of Nafse Zakiyyah revolted in 145 AH/ 763 CE. Here, the Imam openly supported him and opposed Mansoor, despite the fact that Mansoor was present in Kufa at that time. Ibraheem's army was marching from Basra towards Kufa and the city used to be under curfew every night. His renowned student, Zufar bin alHuzail, narrates that even in that precarious situation, the Imam was quite defiant in voicing his views. He says that things had reached such an extreme that he told the Imam, "You would not keep away until we are all taken away in chains".

[alKhateeb, Vol 13, page 330. alMakki, Vol 2, page 171]

The people of Mosul rebelled in 148 AH (765 CE). Mansoor had already taken their word after a previous rebellion that the next time they rebel, he would be entitled to spill their blood and annex their properties. Now that they had revolted again, Mansoor assembled all the leading jurists, including Imam Abu Haneefah, and asked them if, as per the agreement, he was entitled to their lives and property. The other jurists leant back on the agreement and

¹ alAhkaam alQur'an, Vol 1, page 81.

said that while it would behove your stature to pardon them, you can yet punish them in a way you deem suitable. Abu Haneefah remained silent. Mansoor asked him his opinion. The Imam replied, "The people of Mosul have entitled you to an entity that did not belong to them in the first place (i.e. their life) and you have compelled them to agree to a condition that was beyond your jurisdiction. Tell me, if a woman offers herself to a man without having married him, would it be permissible for that man to sleep with her? If a man tells another person to murder him, would the latter acquire the right to murder him?" Mansoor replied in the negative. The Imam replied, "In that case, you should restrain yourself from (acting against) the people of Mosul. It is not at all permissible for you to shed their blood." Hearing this, Mansoor dismissed the assembly of jurists in a fit of rage. He then called Abu Haneefah in private and said, "What you have said is absolutely true. But you should not issue edicts that affect your leader and boost the morale of rebels".¹

The Imam used to employ this freedom of expression against courts too. If a court were to issue a wrong verdict, the Imam used to point out the flaw in the law or proceeding as the case may be. According to him, respect for the court does not mean that the courts should be left free to issue wrong verdicts. He was banned from issuing edicts for a certain period for being so audacious.²

When it comes to freedom of expression, the Imam goes to such lengths as to disapprove of the arrest and imprisonment of a person who raises his voice against a valid leadership and a just government or against the incumbent Caliph or even threatens to assassinate him, until he resorts to armed rebellion or creates a law-and-order problem. He cites the precedent of Syedna Ali (God

¹ Ibn alAtheer, Vol 5, page 25. alKardari, Vol 2, page 17. alSarakhsi, Kitaab alMabsoot, Vol 10, page 129.

² alKardari, Vol 1, pages 160, 165, 166. Ibn Abdul Barr, alltiqa', pages 152, 153. alKhateeb, Vol 13, page 351.

be pleased with him) in this regard. When Syedna Ali was the Caliph, five people were arrested and brought before him on charges of publicly abusing the Caliph in the streets of Kufa, with one of them even threatening to kill him. Syedna Ali ordered for their release. When asked why he had released them when they were planning to kill him, Caliph Ali retorted, "So should I kill them for simply having planned to kill me?" He was further told, "But these people were abusing you". At this he replied, "You can also abuse them if you like". The Imam also cites Caliph Ali's statement about rebellion against the state that he had issued in relation to the Khawarij, "We would not prevent you from coming to the masajid and we would not deprive you from your share of the spoils of war until you resort to an armed rebellion against us".¹

The Issue of Revolting against an Oppressive regime

One of the most important issues of that time was whether it is permissible to revolt against the leader of the Muslim nation if he happens to be an oppressive tyrant. Even the Ahle Sunnat are divided on this matter. A sizable number of the Ahle Hadith faction has maintained that it is sufficient to raise our voice against his cruel policies and seek to reform him, but it is not appropriate to revolt against him even if he sheds blood, violates the rights of the people and is defiantly disobedient.²

Imam Abu Haneefah, however, ruled that the leadership of a tyrant is not only invalid; it is even permissible to revolt against it. And people should definitely revolt against him provided there is a clear possibility of achieving a successful and advantageous rebellion, replacing the oppressive tyrant with a just and righteous leader, lest the rebellion only boils down to a

¹ alSarakhshi, Kitab alMabsoot, Vol 10, page 125.

² alAsh'ari, Muqalaat alIslameen, Vol 2, Page 125.

waste of life and energy. Abu Bakr alJassas explains this position of the Imam in the following words:

*"His stand on revolting against tyrants and oppressive leaders is well documented. It is for this reason that Awzai had said, 'We used to put up with everything that Abu Haneefah said until he came with the sword in hand (i.e. he consented to an armed uprising against the oppressors)'. This, we could not tolerate'. Abu Haneefah used to say that enjoining good and forbidding evil is an obligation that begins with the tongue; but if that does not yield results it is mandatory to pick up the sword."*¹

Elsewhere he quotes Imam Abu Haneefah on the authority of Abdullah ibn alMubarak. This statement dates back to the era of the first Abbasid Caliph, when Abu Muslim Khurasani had gone overboard with oppression and tyranny. Khurasan's jurist, Ibraheem alSaigh sought an audience with the Imam to discuss the intricacies of enjoining good and forbidding evil. The Imam has narrated this conversation to Abdullah ibn alMubarak, in which he says:

"When we agreed upon the fact that enjoining good and forbidding evil is an obligation, Ibraheem suddenly asked me to extend my hand so that he could pledge his allegiance to me. I was left dazed by his words. (When Ibn alMubarak asked him why, he replied...) He invited me to fulfil a divine command, but I flinched. I then told him, if a lone person raises the banner of revolt he would be killed without achieving any good. However, there is no harm if he gains the support of righteous people and there is a proper person available to lead the revolt who can be relied upon in matters of deen. After this meeting, whenever Ibraheem used to approach me, he used to press me for it in such an emphatic way as if he was

¹ Ahkaam alQur'an, Vol 1, page 81.

*frantically claiming back some money I owed him. I used to try convincing him that this is not a one-man job. Even the messengers of God did not have the capacity to perform this job until they were appointed for this by divine will. This is unlike any other obligation. Even a single person can fulfil other obligations. But this is such a task that if a single person stands up, he would be mowed down, and I fear he would be held guilty of abetting his own murder. And once he is killed, others would also get discouraged.*¹

The Imam's own example in this regard

The above discussion sheds ample light on the principles the Imam held dear. But it would be difficult to completely understand his point of view unless we study his role in the uprisings that were witnessed during his age.

The revolt of Zaid bin Ali

The first incident is that of Zaid bin Ali, the Imam of the Shia faction, Zaidiyah. He was the grandson of Imam Hussain (God be pleased with him) and the brother of Imam Muhammad alBaqar. He was one of the greatest scholars and jurists of his time; extremely pious and righteous in conduct. He has been a teacher of Imam Abu Haneefah himself. In the year 120 AH/ 738 CE, when Hisham bin Abdul Malik dismissed Khalid bin Abdullah alQasri from the governorship of Iraq and launched an investigation against him, Imam Zaid was summoned from Madinah to Kufa to testify before the court. This was the first time in many years that a distinguished member of Syedna Ali's family had arrived in Kufa. This city was the fortress of Syedna Ali's acolytes (the Shia). His arrival breathed a fresh lease of life in the Ali'ite movement and people began gathering around him in large numbers. The

¹ *ibid*, Vol 2, page 39.

people of Iraq were anyway frustrated with the tyranny of the Umayyad regime and they desperately needed a saviour. They saw a ray of hope in this righteous jurist from Syedna Ali's family. They assured Zaid that a hundred thousand men from Kufa would stand by him, with no less than fifteen thousand people already having formally pledged allegiance and enrolled themselves in their register. While these plans of uprising were being finalized behind closed doors, the Umayyad governor received intelligence about it. Realizing that the government has been alerted, Zaid staged the rebellion in Safar 122 AH/740 CE, much before the scheduled date. But when the time of actual fighting drew close, the Kufan acolytes of Syedna Ali forsook him, leaving him alone. Only 218 people fought along with him. He was martyred in the battle when an arrow fatally wounded him.¹

Imam Zaid had received the full moral backing of Imam Abu Haneefah in this revolt. He not only donated for the cause, but also exhorted the people to join him.² He compared his uprising to that of the Prophet's uprising at the Battle of Badr.³ He thus meant to convey that just as there is no doubt about the Prophet ﷺ being on the right in the Battle of Badr, there should be no doubt about Zaid bin Ali being on the right in this revolt. But when Zaid sent him a message asking him to enlist his active participation in the ensuing battle, he told his messenger, "Had I known that the people would not betray him and stand by him in all sincerity, I would have definitely supported him and participated in *jihad*, for he is the *Imam-e-Haq*. But I have a feeling these people would forsake him just as they had forsaken his grandfather (Imam Hussain). I would, however, aid him with money".⁴

¹ alTabari, Vol 5, pages 482-505.

² alJassas, Vol 1, page 81.

³ alMakki, Vol 1, page 260.

⁴ ibid

This was in complete accordance with the principle that the Imam had stated with respect to revolting against an oppressive ruler. He was well acquainted with the history and attitude of the Shias of Kufa. Everyone was aware of the behaviour and conduct they had been displaying right from the time of Syedna Ali's Caliphate. Dawood bin Ali (the grandson of Ibn Abbas) had also forewarned Zaid about this betrayal of the Kufans and dissuaded him from going ahead with the revolution.¹

Imam Abu Haneefah was also cognizant of the fact that this movement is limited to Kufa. The rest of the Umayyad Empire was being left untouched. It had no organizational setup in other provinces. So there was no chance of getting any reinforcement. And whatever setup was seen in Kufa was also no more than a half-baked structure that was just some months old. Hence, going by these apparent factors, the Imam did not feel that Zaid's uprising would lead to a successful revolution. One more possible reason why the Imam stayed away from active combat was that he was not as influential those days; his participation could not have tilted the balance in Zaid's favour. Until 120 AH, the religious school of reasoning in Iraq was under Hammad, Abu Haneefah simply being one of his many students. It was only about a year and a half since he had assumed the role of its principal that Zaid had staged his revolt. He had not yet been conferred the title of 'Jurist of the East' or the influential status that it carried.

The revolt of Nafse Zakiyyah

The next revolt was led by Muhammad bin Abdullah (Nafse Zakiyyah) and, after him, by his brother Ibraheem bin Abdullah. They were from the family of Imam Hasan bin Ali (God be pleased with him). This revolt dates back to 145 AH/ 762-763 CE when Imam Abu Haneefah had reached his zenith. These two brothers had been running a

¹ alTabari, Vol 5, pages 487-491.

clandestine movement ever since the era of the Umayyad dynasty. Even Mansoor had pledged allegiance to Nafse Zakiyyah along with certain other people who wanted to revolt against the Umayyad regime.¹ After the establishment of the Abbasid Caliphate, these people went underground and kept propagating their message in hushed tones. Their representatives were spread across Khurasan, the Arabian Peninsula, Rae, Tabaristan, Yemen and northern Africa. Nafs Zakiyyah had established his headquarters in Hijaz, while his brother Ibraheem had made the Iraqi town of Basra his centre. According to Ibn Atheer, a hundred thousand Kufan swords were also waiting to get unsheathed in their support.² alMansoor was already aware of their underground movement and remained apprehensive of them, for their movement had been running parallel to the Abbasid movement that had led to the establishment of the Abbasid caliphate. Moreover, their organizational setup was no weaker than the Abbasid setup. It is for this reason that he had been eagerly trying for quite some years to disrupt this organization and was employing all his might to crush it. When, in the year 145 AH, Nafse Zakiyyah staged a formal revolt from Madinah, Mansoor fled the under-construction city of Baghdad in a state of panic and secured himself in Kufa. It was not until this movement came to an end that he heaved a sigh of relief, before which he was not even sure whether his regime would withstand the uprising or not. There were times when he would utter in a state of hysteria, "By Lord! I am at a loss of options. I have no idea what I should be doing". News kept coming in that Basra, Faras, Ahwaz, Wasit, Madain etc. had fallen and he was terribly anxious of fresh revolts breaking out in other parts of the nation. So worried was he that he had not changed his clothes for two months in a row, had not slept in his bed and used to spend entire nights on the prayer-

¹ alTabari, Vol 6, pages 155-156.

² alKaamil, Vol 5, page 18.

mat.¹ He had made arrangements for his emergency escape from Kufa, for which swift-footed steeds were kept ready 24x7. Had it not been for his good fortune, this movement would have definitely toppled him and the Abbasid dynasty for good.²

Imam Abu Haneefah's approach towards this revolt was very different from the one he had adopted during the previous revolt. As we have mentioned earlier, he had openly voiced his support for this movement at a critical time when Mansoor was present in Kufa and there used to be a curfew imposed in the city every night. Such was his attitude that his students feared imminent arrest. He used to call upon people to support Ibraheem and encouraged them to pledge their allegiance to him.³ He used to tell people that participating in this rebellion would earn them 50-70 times the reward of a supererogatory Hajj.⁴ He even told a person named Abu Is'haq alFazari that 'Your brother's act of supporting Ibraheem is greater in virtue than your act of waging *jihad* against the disbelievers'.⁵ These statements of the Imam have been reproduced by high ranking jurists like Abu Bakr Jassas, alMakki and Ibn Bazzaz alKardari (author of Fatawa Bazzaziyah). The straight and clear import of these statements is that according to the Imam, any attempt to rescue the domestic organizational system of the Muslim society from an iniquitous leadership holds much more value and importance than fighting the external threat of disbelievers.

His most important and boldest step was to dissuade Mansoor's most trusted General and his Commander-in-Chief, Hasan bin Kahtubah from going to war against Nafse Zakiyyah and Ibraheem. His father, Kahtubah, was

¹ alTabari has discussed a detailed historical account of this movement in Vol 6, pages 155-263. We have only presented a gist here.

² alYafi', Vol 1, page 299.

³ alKardari, Vol 2, page 72. alMakki, Vol 2, page 84.

⁴ alKardari, page 71. alMakki, page 83.

⁵ alJassas, Ahkam alQur'an, Vol 1, page 81.

the very person whose sword had aligned with the political plans of Abu Muslim to lay the foundations of the Abbasid Sultanate. He had succeeded his father to the post of Commander-in-Chief and Mansoor had more faith and confidence in him than in any other General. But his stay at Kufa had made him a disciple of Imam Abu Haneefah. He once submitted to the Imam, "Sir, you are well aware of all the sins I have committed till date (i.e. whatever wrong I have inflicted upon the people while serving Mansoor). Now do I have any chance of being forgiven?" The Imam replied, "If God sees that you are remorseful and full of guilt for what you have done, and if the next time you are asked to kill an innocent Muslim and you prefer getting killed instead of killing that person, and if you make a solemn promise to God that you would not repeat your past deeds, this would suffice as your repentance". Hasan called the Imam to stand witness to his resolution and pledge. It was not long after this when the revolt of Nafse Zakiyyah and Ibraheem came to light. Mansoor commanded him to proceed to battle against them. Hasan approached the Imam to consult him on this matter. The Imam said, "This is the time when your repentance would be put to test. If you abide by your resolution, your repentance would remain valid. But if you act otherwise, not only would you be punished for what you would do now, you would also be held accountable before God for whatever you have done in the past." Hasan reiterated his repentance and promised the Imam that he would not proceed for this battle even if he is executed for it. Accordingly, he went to Mansoor and told him upfront, "O Ameer alMumineen, I would not go on this campaign. If whatever I have done for you till now was in obedience to God, I consider it sufficient for me. And if it was done in disobedience to God, I do not wish to sin any further". Outraged by his words, Mansoor ordered for his arrest. Hasan's brother, Hameed stepped forward and said, "He has been acting quite differently for a year now. It seems as if he has lost his mind. I would go on this

campaign instead". Mansoor later called his trusted lieutenants and asked them which jurist Hasan used to frequent. He was told that he was often seeing visiting Imam Abu Haneefah.¹

This approach was also in complete accordance with the Imam's views that if there is a possibility of having a successful and righteous revolution, revolting against an oppressive regime is not only permissible, it is even mandatory. Imam Malik's approach was no different from that of Imam Abu Haneefah. When Nafse Zakiyyah launched his revolt, the people asked him how they could support a person for Caliphate when they had already pledged their allegiance to Mansoor. Imam Malik issued an edict that the allegiance people had pledged to the Abbasis was taken under duress, and any pledge of allegiance or oath or divorce taken or given under duress is invalid.² It was because of this edict that a majority of the people sided with Nafse Zakiyyah. Imam Malik had to later pay for this. The Abbasid Governor of Madinah, Ja'afar bin Sulaiman, flogged him and uprooted his arm from the shoulder.³

And Imam Abu Haneefah is not alone....

It would be erroneous to assume that Imam Abu Haneefah was the only one among the Ahle Sunnah who subscribed to this view. What is in fact true is that the opinion of all the leading religious scholars of the first century was exactly the same as the one presented by the Imam through his words and deeds. In his first sermon after

¹ alKardari, Vol 2, page 22.

² What the Abbasis used to do was that when they used to take the pledge of allegiance, they also used to take an undertaking from the people stating that if they break their pledge, their wives would get divorced. It is for this reason that the Imam clarified the issue of forced oath and divorce along with a pledge of allegiance that is taken under duress.

³ alTabari, Vol 6, page 190. Ibn Khallikan, Vol 3, page 285. Ibn Katheer, alBidayah wal Nihaya, Vol 10, page 84

assuming the role of Caliph, Abu Bakr Siddiq (God be pleased with him) had said,

اطيعوني ما اطعت الله ورسوله فاذا عصيت الله ورسوله فلا طاعة لي عليكم

"Obey me as long as I obey God and His Messenger. However, if I disobey God and His Messenger, you are under no obligation to obey me".¹

Caliph Umar (God be pleased with him) had said,

من بايع رجلا من غير مشورة من المسلمين فلا يبايع هو ولا الذي بايعه تغرة ان يقتلا

"He who pledged his allegiance to anyone without consulting the Muslims has deceived his own self as well as the person to whom he has pledged his allegiance. And by doing so, he offers himself to be killed".²

When Imam Hussain (God be pleased with him) revolted against Yazeed's established Caliphate, most of the Companions of the Prophet were still alive, and almost all the jurists belonging to the second generation (Tabai) witnessed that revolt. But we have not come across a single statement by any Companion or Tabai accusing Imam Hussain of indulging in a forbidden act. Whoever asked the Imam not to proceed did so because he felt that the people of Iraq were not trustworthy enough. They cautioned him

¹ Ibn Hisham, Vol 4, page 311. alBidayah wa alNihayah, Vol 5, page 248.

² These are the words of Bukhari, Kitaab alMuhaarabeen, Baab: Rajam alJabla min azZina. In Fath alBari, Vol 12, page 125, Caliph Umar has been quoted as saying, "It is not permissible for a person to accept the post of leadership if he is offered the same without due consultation". Imam Ahmad has also recorded a statement of Caliph Umar wherein he says, "If a person were to pledge his allegiance to someone without consulting the Muslims, his pledge stands null and void. Similarly, the person to whom he had pledged his allegiance also does not receive any sanction." This is recorded in Musnad Ahmad, Vol 1, Hadith #391.

that their treacherous nature would not allow him to taste success and he would instead expose himself to untold danger. In other words, they all held the same opinion which Imam Abu Haneefah later presented, that: 'While it is not impermissible to revolt against an oppressive regime per se, it should first be ascertained whether there is a strong possibility of replacing the evil regime with a righteous one'.

In the same way, when Abdur Rahman bin Ash'ath revolted against the Umayyad Caliphate during the tyrannical tenure of Hajjaj bin Yusuf as governor, the leading jurists of that time- Saeed bin Jubair, ashSha'abi, Ibn Abi Laila and Abu alBakhtari- stood by him. And even those who did not support him did not say that this revolt was illegitimate. The speeches delivered by these jurists addressing the army of Ibn Ahs'ath give us a clear idea of their views on this topic.

Ibn Abi Laila said,

"O believers, he who witnesses people being oppressed and sees that evil is being propagated would be left absolved if he feels disgusted by it. And if he speaks out against it, he would be rewarded and considered better than the first person. However, the person who attains the exact way of guidance and enlightens his heart with the radiance of faith is none other than he who opposes such people with the sword in order to proclaim the supremacy of God and disgrace the authority of the oppressors. So you should wage war against those people who have permitted the forbidden and have paved wrong paths within the community, those who have distanced themselves from the right to the extent that they no longer recognize the truth, those who practice oppression without feeling bad about it".

AshSha'abi had said,

"Fight them. And do not think that fighting against them is something bad. I swear to God that I do not

know of any group existing on the face of the earth today who is a bigger tyrant than them, nor is there anyone who is more unjust in their decisions. So let there be no slackness in fighting against them”.

Saeed bin Jubair said,

*“Fight them, for they are oppressive in their rule, transgressors in matters of religion, they deride the weak ones and are neglectful of their prayers”.*¹

This was the general opinion of the religious scholars of the first century, and Imam Abu Haneefah was a contemporary. Hence, it was but natural for his opinion to concur with theirs. At the turn of the second century, however, a new opinion began gaining ground which is now widely regarded as the near-unanimous opinion of Ahle Sunnah. The reason this second opinion found currency was not because of some explicit documented proof that had recently been discovered in its favour, which the elders of the first century were unaware of or had, God forbid, deliberately ruled against. Rather, there were two reasons for this shift. The first reason was that the tyrants had not left any space open for a peaceful democratic revolution, and the second reason was that all previous attempts to bring about an armed revolution were met with such dismal consequences that such an approach could no longer be expected to yield the desired results.

Tarjumanul Qur'an

August and September 1963 CE

¹ alTabari, Vol 5, page 163.

Imam Abu Haneefah's ruling on the issue of Armed Rebellion

Question:

You have explained Imam Abu Haneefah's stand on the issue of Armed Rebellion in Tarjumanul Qur'an (the previous essay). But it seems difficult to concur with some of the episodes you have quoted from certain books in this regard. The readers of Tarjumanul Qur'an can get confused about Imam Abu Haneefah's stand given the style of narration of these incidents. They might even notice a marked inconsistency and discrepancy in the Imam's stand if they have studied the Imam's creed and line of jurisprudence.

Here, I would like to bring your attention to an episode that finds mention in the latter part of your essay, that you have related on the authority of Ibn alAtheer, alKardari and alMabsoot Vol 10, page 129. It is about the rebellion staged by the people of Mosul. You have presented it in such a way that the reader would take it for granted that these rebels were Muslim citizens. But that is not true. It has been mentioned in Mabsoot that this incident relates to the pagan citizens' rebellion, with whom Caliph Mansoor had entered into a truce. You have also mentioned that in his agreement with the citizens of Mosul, Mansoor had made them agree to a clause that if they were to rebel again he would be entitled to their life and property. And it is to discuss this matter that Mansoor had assembled the jurists, one of whom was Imam Abu Haneefah, and asked them if, as per the agreement, 'he' was entitled to their lives and property'. And it is to this question that Imam Abu Haneefah had replied, "You should restrain yourself from

(acting against) the people of Mosul. It is not at all permissible for you to shed their blood". However, Mabsoot has a completely different version. It is clear from that narration that the said agreement had got nothing to do with the life and blood of the rebels. Instead, it was related to the execution of those pagan prisoners who were handed over by the rebels as a 'guarantee' to the Muslims. They were thus being held hostage by the Muslims. Both parties had agreed to the clause that if one party murders the prisoners belonging to the other party, the other party would also be entitled to murder the prisoners held by them. Now that the citizens of Mosul had murdered the Muslim prisoners they had held hostage, it was deemed necessary to ask the jurists what steps should be taken against the pagan prisoners that the rebels have surrendered to us as hostages. It is in relation to the execution of those prisoners that Imam Abu Haneefah had stated, "It is not permissible for you to shed their blood". It is erroneous to assume that the Imam had said this in relation to the rebellion of Muslim citizens, that it is impermissible to kill the rebels.

In any case, how could the Imam have ruled against the killing of rebels, stating that it was impermissible to kill them, when Imam Sarakhshi has, at the beginning of this very chapter in alMabsoot, reproduced the Imam's ruling on rebels in the following words: 'It is mandatory to kill the rebels if they revolt against a leader who has established peace and security in the land (even if he happens to be a tyrant)'?

فان كان المسلمون مجتمعين على واحد و كانوا أمنين به والسبيل
 آمنة فخرج عليه طائفة من المسلمين فحينئذ يجب على من يقوى
 على القتال ان يقاتل مع المسلمين الخارجين (١ هـ ج ١٠، ص ١٢٤)
*"If the Muslims have agreed upon a ruler, and they are
 living in peace and security, and the highways are
 secure, and then if a group revolts against that ruler, it*

is incumbent upon every person who can fight to ally with the Muslims and fight the rebels”.¹

Among the arguments Imam Sarakhsi has presented in support of this ruling, he has also presented the following ayat:

فَإِنْ بَعَثَ أَحَدُهُمَا عَلَى الْآخَرِ فَقَاتِلُوا الَّذِي تَبَغَّى حَتَّى يَرْجِعَ إِلَى أَمْرِ اللَّهِ

(الْحُجُرَات: ٩)

“But if one of them oppresses the other, then fight against the party that oppresses until it returns to the ordinance of Allah.” [Surah alHujurat ayat 9]

Given this explicit injunction of the Qur'an, how could Imam Abu Haneefah have said, 'It is impermissible to kill the rebels'? I need not reproduce the explanation Imam Sarakhsi has presented in Mabsoot. I expect you to go through the relevant passages once again and correct your essay while replying to this letter. I also hope you would publish this letter so that it serves to benefit your readers.

Reply:

It seems as if you have run a cursory glance over my article and made haste in voicing your opinion. The part of my essay from which you have quoted this incident does not deal with the legal position adopted in the matter concerning the citizens of Mosul. What I had instead sought to convey was the boldness with which Imam Abu Haneefah used to put across his opinion. It is for this reason that I have not dealt with the details of the rebellion. If you read the entire essay, you would at once realize that those details were completely unrelated to the context in which the incident has been narrated (i.e. under 'Freedom of Speech and Expression').

But since you have touched upon this issue, allow me to elaborate upon the same. The narrative offered by Ibn

¹ alMabsoot, Vol 10, page 124

alAtheer and alKardari with regards the citizens of Mosul varies from the one offered by Shams alAimmah, Sarakhsi. Shams alAimma narrates that the citizens of Mosul who had rebelled were disbelievers. What they had done was that they had murdered Mansoor's men whom they had taken hostage. They had already entered into an agreement with Mansoor that if they were to kill them, Mansoor would also have the right to kill their men who were being held hostage by the Muslims. As per Shams alAimma, it was this issue that Mansoor had presented before the jurists, asking them whether he was now entitled to kill the hostages belonging to the rebels in retaliation. On the other hand, Ibn alAtheer claims that it was Hassan bin Mujalid who had rebelled in Mosul, and what Mansoor had asked the jurists was not whether he was entitled to fight the rebels or not. What he had instead enquired was, "The people of Mosul have entered into an agreement with me promising me that if they revolt again, their lives and properties would be at my disposal". You know very well what this entails. This does not simply mean that they had allowed him to wage war against them. What it actually means is that once he gains control over them, he would be entitled to kill all their grown up men and attach all the property that belongs to them. This is the question that Mansoor had put forth before the jurists. Some of those jurists replied that since those people have themselves entitled you to their lives and properties, you have all the right to do so. Imam Abu Haneefah, however, said that it would be impermissible for Mansoor to do so. alKardari has also narrated almost the same version.

Now please tell me what is it that you find objectionable? Is it really Imam Abu Haneefah's stand that if the government gains control over Muslim rebels it is authorized to slay all their grown-up men and attach their properties- regardless of whether they have consented for the same or not?

In my opinion, the narration offered by Ibn alAtheer and alKardari is closest to the truth, the narrative of Shams alAimma deviating from historical facts. This is because during Mansoor's reign, neither was Mosul ruled by any pagan regime, nor were the pagan leaders of Mosul powerful enough to revolt against the Abbasid Caliphate. But since I have focussed on an entirely different perspective, I have quoted the references of all three authors to relate Imam Abu Haneefah's passion to speak the naked truth, for they all concurred with each other as far as this aspect was concerned.

Question:

I thank you for having published my query on the issue of armed rebellion in the November issue of Tarjumanul Qur'an and for having replied to the same. Unfortunately, the reply you have furnished has not been able to dispel the doubts that had clogged my mind after having read your essay on the issue of Caliphate. Hence, I would like to pen down my query in some detail. I sincerely hope that you would publish the answers to the same as well, so that the readers of Tarjumanul Qur'an can gain more insight in this matter.

In your essay on the Issue of Caliphate, you have presented three basic points with regards Imam Abu Haneefah's stand on the caliphate of a *zaalim* (tyrant/oppressor) and *fasiq* (impious/disobedient) person. The first of those was that unlike the Khawarij and Mu'tazilah, the Imam does not consider such a Caliphate invalid in the sense that no collective or community affair of the Muslims can take place under his rule, leaving the entire social and political order suspended, nor does he consider it absolutely right and valid as the Murhibah do, allowing the Muslims to comfortably accept it without putting in any attempt to overthrow it. Steering clear of these extremes, Imam Abu Haneefah presents a just and balanced approach. He avers that all collective activities would remain valid under his

rule, but his rule would itself be invalid and illegitimate. The second point is that every Muslim has the right to engage in 'enjoining the right and forbidding the wrong' against an oppressive regime; not only a right, it is also every Muslim person's duty. The third point is that it is also permissible to revolt against such an oppressive regime, provided there is a serious possibility of such an uprising leading to the establishment of a just and righteous government instead of simply giving way to chaos and disturbance. If this condition is met, the revolt would not only be permissible, it would rather be incumbent upon the Muslims to engage in it.

In this context, I feel that the statements 'Imam Abu Haneefah considered the caliphate of a tyrant and impious person invalid' and 'Imam Abu Haneefah considered it permissible to revolt against the rule of a tyrant and impious person' do not quite represent Imam Abu Haneefah's creed. In my opinion, the Imam's creed on rebellion is, 'Even if a tyrant and impious person were to impose his authority over the nation by brute force-referred to as '*mutaghallib*' in legal parlance- and possesses the strength to implement his commands by means of coercion, the Imam considers his Caliphate valid to the point that he considers it impermissible to rebel or revolt against him, even if he happens to be an impious tyrant who has not received proper pledges of allegiance in line with the recognized procedure. And just as he considers all other collective activities performed under his rule permissible and valid, he also considers revolting against such a regime impermissible and forbidden. I present the following statements of the scholars of Hanafi jurisprudence to support my view:

والامام يصير اماما بالمبايعة من الاشراف والاعيان- وكذا باستخلاف
امام قبله و كذا بالتغلب والقهر كما في شرح المقاصد- قال في
المسائرة ويثبت عقد الامامة اما باستخلاف الخليفة اياه واما ببيعة

جماعة من العلماء او من اهل الرأي والتدبير--- ولو تعذر وجود العلم والعدالة فيمن تصدى للامامة وكان في صرفه عنها اثاره فتنه لا تطاق حكمنا بانعقاد امامة كيلا نكون كمن يبنى قصرا و يهدم مصرا --- و يجب طاعة الامام عادلا كان او جائرا اذا لم يخالف الشرع فقد علم ان الامام يصير اماما بثلاثة امور لكن الثالث في الامام المتغلب- و ان لم تكن فيه شروط الامامة- اهـ (رد المختار، ج ٣، ص ٤٢٨)

"A person becomes the Imam if he receives the pledges of allegiance of respected and influential men. Similarly, he also becomes the Imam if he is nominated a successor by the previous Imam or he ascends to the post by means of brute force, as is mentioned in Sharh alMagaasid. It has been mentioned in alMasairah that if a Caliph were to nominate someone his successor, or if a group of religious scholars and opinion makers or men of wisdom pledge their allegiance to him, he is considered a valid Imam. If the Imam is lacking in knowledge and righteousness, but overthrowing him can lead to riots and chaos, we rule in favour of his leadership. This is because we do not wish to act like those men who raze an entire town to construct a single building. Irrespective of whether the Imam is just or oppressive, it is incumbent upon the subjects to obey him as long as he does not rule against the Shariah. It is known that a person becomes Imam via three ways, of which the third relates to a Mutaghalib Imam, regardless of whether he fulfils the requirements of the post or not."

[Radd alMukhtar, Vol 3, page 428]

It is nonetheless important for an Imam to be just, but not as a qualifying condition for the post of Caliphate, rather as a preferable quality. It is for this reason that the leadership of an impious person is regarded as *makrooh* (reprehensible) and not invalid per se.

وعند الحنفية ليست العدالة شرطاً للصحة فيصح تقليد الفاسق
الامامة مع الكرامة- ١هـ (شامى ج، ١، ص ٥١٢)

"The Hanafi scholars do not regard justice as a qualifying condition for the leadership to be valid. It is appropriate to follow an impious Imam with a sense of reprehension."
[Shami, Vol 1, page 512]

It is on this basis that Hanafi scholars have ruled in favour of a *Mutaghallib* Imam (a person who has come to power by force).

وتصح سلطنة متغلب للضرورة- ١هـ

"The rule of a person who has become an Imam by force is appropriate as per requirement".

Imam Abu Haneefah's stand regarding such an impious person has been related as follows:

ويجب ان يدعى له ولا يجب الخروج عليه كذا عن ابي حنيفة- ١هـ

"It is important to pray for him, not revolt against him- this has been narrated as such from Abu Haneefah himself".

All these statements have been mentioned by Ibn Hammam in *Musairah*. They clearly convey Imam Abu Haneefah's stand that just as all other collective activities can be carried out under the rule of a tyrant and impious person, it is also permissible to boycott it and revolt against it. The only condition here is that the boycott and revolt should not lead to chaos and disorder. But since every revolt in contemporary times brings along with it its fair share of chaos and disorder, certain Hanafi scholars have even said that,

اما الخروج على الامراء فمحرم باجماع المسلمين وان كانوا فسقة
ظالمين- ١هـ (مرقات)

"As per the consensus of the Muslims, revolting against the leaders is a forbidden act, even if he happens to be an impious tyrant."
[Marqaat]

Hence, if there is such a regime in place, it would be sufficient to preach against it using one's words alone.

As far as the Imam's stand regarding Muslim rebels is concerned, whatever I have understood is that if a group revolts against the leader, despite the situation being one in which a rebellion would stand forbidden, it is permissible to kill the rebels. However, it would be impermissible to kill those people who have not actively participated in the rebellion. These could be women, children, old and blind people or even those men who have not supported the rebels in their rebellion. Kindly consider the following statements issued by Hanafi scholars in this regard:

فان كان المسلمون مجتمعين على واحد و كانوا أمنين به والسبيل
أمنة فخرج عليه طائفة من المسلمين فحينئذ يجب على من يقوى
على القتال ان يقاتل مع امام المسلمين الخارجين- ١م

"If the Muslims have agreed upon a ruler, and they are living in peace and security, and the highways are secure, and then if a group revolts against that ruler, it is incumbent upon every person who can fight to ally with the Muslims and fight the rebels".

[Imam Sarakhsi, alMabsoot, Vol 10, page 124]

Imam Sarakhsi has offered three arguments in support of this fight.

The first argument is:

فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَىٰ فَقَاتِلُوا الَّتِي تَبْغِي حَتَّىٰ تَفِيءَ إِلَىٰ أَمْرِ اللَّهِ

(الجزات: ٩)

"But if one of them oppresses the other, then fight against the party that oppresses until it returns to the ordinance of Allah."

[Surah alHujurat ayat 9]

His second argument is:

ولان الخارجين قصدوا اذ المسلمين و اماطة الاذى من ابواب الدين،
و خروجهم معصية ففى القيام بقتالهم نهى عن المنكروهو فرض-

"This is because the rebels have determined to harm the Muslims, and it is part of deen to abolish whatever is harmful. Their revolt is an act of sin, and fighting against it comes under the ambit of 'forbidding the wrong', which is an obligation."

His third argument is:

ولأنهم يهيجون الفتنة قال صلى الله عليه وسلم الفتنة نائمة لعن الله من ايقظها- فمن كان ملعوناً على لسان صاحب الشرع ﷺ يقاتل معه- اهـ

"They thus create fitna (disorder/dissention), and the Prophet ﷺ has said, 'Fitna is dormant in nature. He who arouses it would be cursed by God'. So it is advisable to fight against an entity that the Prophet has termed accursed."

All these statements at least prove that it is *wajib* (compulsory) to fight the rebels. And Shariah allows us to fight only those whose lives have not been granted immunity. This has been pointed out in the following Hadith:

امرت ان اقاتل الناس حتى يقولوا لا اله الا الله وان محمداً رسول الله فاذا فعلوا ذلك عصموا مني دمانهم و اموالهم (الحديث)

"I have been commanded to fight people until they say, 'There is no god but Allah and Muhammad is His messenger'. Once they have said this, they have secured their lives and properties from me."

Since fighting the rebels is compulsory, it follows that their lives have not been granted immunity, and it becomes permissible to kill them too. It is for this reason that the jurists of the Hanafi school of jurisprudence clearly mention in their books that it is permissible to kill rebels.

While commenting upon the killing of rebels, the author of *Bada'i alSana'i* writes:

و اما بيان من يجوز قتله منهم و من لا يجوز فكل من لا يجوز قتله من اهل الحرب من الصبيان والنسوان والاشياخ والعميان لا يجوز قتله من اهل البغى- لان قتلهم لدفع شرقتالهم فيختص باهل القتال وهؤلاء ليسوا من اهل القتال فلا يقتلون الا اذا قاتلوا فيباع قتلهم في حال القتال وبعد الفراغ من القتال- اه (ج ٧، ص ١٤١)

"As for the question of who among them can be killed and who cannot, it should be known that just as it is impermissible to kill women, children, elderly and blind people belonging to enemy ranks, it is also impermissible to kill such people belonging to the rebels. This is because the only purpose of killing the rebels is to crush the rebellion, and this purpose can be sufficiently achieved by killing those rebels who are capable of warfare. And since the above mentioned categories of people are incapable of warfare, they would not be killed unless they are involved in active combat. They would be killed in the battle or thereafter only if they have been involved in active combat."

[Vol 7, page 141]

Imam Abu 'Haneefah's creed about rebels is very clearly defined in the explanations offered by these jurists. If an Islamic government gains control over Muslim rebels, it stands justified at killing all the men who were involved in the rebellion and attaching their properties, irrespective of whether those Muslim rebels had already agreed to this condition or not. This fighting and killing would continue until the rebels surrender themselves. Once they surrender themselves, the fighting and killing would also cease.

Their property, however, would not be distributed as spoils of war. It would be returned to them after the fighting has concluded or after they have surrendered themselves.

و كذا لك ما اصاب من اموالهم يرد اليهم لانه لم يملك ذالك المال

عليهم لبقاء العصمة بالدار والاحراز فيه- اه (مبسوط ج ١٠، ص ١٢٦)

"Thus, whatever has been taken from their properties would be returned to them. This is because this property, by virtue of being within the Islamic frontiers, is secure; it cannot be treated as the property of the victorious". [alMabsoot, Vol 10, page 126]

If the explanations offered by these jurists are based on the correct interpretation of Imam Abu Haneefa's creed- as is our belief- then how can we concur with the claim that the ones who had rebelled in Mosul were Muslims, and since they had already entered into an agreement with Mansoor that if they were to repeat their act he would be entitled to their lives and properties, and Mansoor had thereby asked the jurists whether it would be permissible for him to lay his hands on their lives and properties, and it is in reply to this query that Imam Abu Haneefah had ruled that he has no right over their lives and properties?

It seems equally astonishing that you have rejected the narration of Shams alAimma, Imam Sarakhsi for the sole reason that it differs from the account offered by historians. When it comes to an issue as delicate as rebellion, it is more appropriate that we rely on the account of a leading jurist. Likewise, in order to understand the creed of a jurist as eminent as Imam Abu Haneefah, we should refer to the statements of those jurists who have been attached to the jurisprudence of that eminent jurist. The possibility of committing errors in compiling historical accounts far exceeds the possibility of committing errors while compiling the edicts of a juristic luminary. Moreover, this incident has been narrated by Shaikh ibn Hammam in Fath alQadeer, Vol 5, page 341 in exactly the same way as it has been narrated by Imam Sarakhsi in alMabsoot. I fail to comprehend how one can prefer the accounts of Ibn Atheer or alKardari over the accounts of these two distinguished jurists.

Reply:

Before commenting upon whatever you have written with regards Imam Abu Haneefah's stand on the issue of rebellion, I would like you to shed some light on a couple of things:

1. Please tell us whether Abu Bakr Jassas, alMuwafiq alMakki and Ibn Bazzaz alKardari are included in the list of Hanafi scholars or not. It should not be hidden from you that Abu Bakr Jassas belongs to the earliest batch of Hanafi scholars, he is the student of Abu Sahl alZajaj and Abul Hasan alKarkhi, and was hailed as '*Imam-e-As'haab-e-Abi Haneefah*' during his time (305-370 AH). His book, Ahkam alQur'an is regarded as a doctrine of Hanafi jurisprudence. AlMuwafiq alMakki (484- 568 AH) was also a Hanafi jurist, and as per alQifti, كانت له معرفة تامة في الفقه والادب 'He had thorough knowledge of jurisprudence and literature'. alKardari, too, was a Hanafi jurist, and his books, Fatawa Bazzaziyah, Aadam alFuqha' and Mukhtasar fi Bayan Ta'arifaat alAhkaam have gained fair renown. I would also like you to shed some light on the authenticity of the passages that I have reproduced from the books of these three scholars, the references to which I have already provided.
2. These three scholars, and many other scholars for that matter, have narrated the approach Imam Abu Haneefah had adopted during the revolts led by Syedna Zaid bin Ali bin Hussain and Nafse Zakiyyah. Do you regard these episodes as authentic historical episodes or not? If these episodes are false, please falsify them by presenting valid grounds for your refutation. And if these episodes are indeed true, can they be referred to understand Imam Abu Haneefah's stand? It can, of course, not be expected of a person as eminent as Imam Abu Haneefah that he would act against his own juristic ruling. Thus, we would have to accept one of these two

things- either these episodes are false, or the correct interpretation of Imam Abu Haneefah's stand can be none other than the one that confirms with his actions.

All that I can say about whatever Shams alAimma Sarakhsi has written on the Mosul episode is that the other (contrasting) narrative comes from Imam Kardari, who, by the way, happens to be a jurist, not a lay historian. alKardari writes that Mansoor had presented the following question before the jurists:

اليس صح انه عليه السلام قال المؤمنون عند شروطهم؟ واهل موصل شرطوا على ان لا يخرجوا على وقد خرجوا على عاملى وقد حل لى دماءهم-

"Is it not true that the Prophet ﷺ has said that the believers would be treated according to the conditions agreed upon? And the citizens of Mosul had accepted the condition that they would not revolt against me. But now that they have revolted against my Governor, am I not entitled to kill them?"

Imam Abu Haneefah had replied,

انهم شرطوا لك مالا يملكونه يعنى دمائهم، فانه قد تقرر ان النفس لا يجرى فيها البذل ولاباحة على ان الرجل اذا قال لآخر اقتلتى فقتله تجب الدية وشرطت عليهم ماليس له لان دم المسلم لا يحل الا باحدى معان ثلاث فان اخذتهم اخذت بما لا يحل و شرط الله احق ان توفى به (مناقب الامام الاعظم، ج ٢، ص ١٧، ١٦)

"They have agreed to a condition involving an entity that does not belong to them, i.e. their lives. It is an established fact that one cannot offer his life to someone else. Even if a person tells another person to kill him, and he kills him, he would still be required to pay blood-money. Moreover, you have included a condition that was beyond your jurisdiction, for the life of a Muslim cannot be taken except in three cases. If you were to kill them, it would not be a legitimate thing

to do. God's conditions are more worthy of being fulfilled." [Manaqib alImam alAzam, Vol 2, page 16-17]

In this extract, both- Mansoor and Imam Abu Haneefah have specified that the matter pertains to Muslims.

Question:

I have received your kind reply. I agree that Abu Bakr Jassas, alMuwafiq alMakki and Ibn alBazzaz alKardari are indeed jurists. I also agree that Ahkam alQur'an and the other books you have mentioned are all reliable books. But despite their stature, they hardly match up to Imam Sarakhsi in rank and status. Also, Imam Sarakhsi's book, alMabsoot, holds a higher position in the eyes of Hanafi jurists than Ahkam alQur'an and all the other books you have listed. Hence, when it comes to determining the juristic stand of Imam Abu Haneefah, alMabsoot would gain precedence over Ahkam alQur'an and other books in terms of reliability and authenticity. Allamah ibn Abideen Shami has, while reproducing the details of *Tabaqaat alFuqaha* (the mutual positions of the jurists) from Ibn Kamal, has placed Imam Sarakhsi on the third level (that of *Mujtahideen fil Masail*, or those who can deliberate on issues) and Abu Bakr Jassas Razi on the fourth level (that of mere followers).

In light of these details, the correct interpretation of Imam Abu Haneefah's creed would be derived from alMabsoot and not from Ahkam alQur'an and other history books.

As for the approach adopted by Imam Abu Haneefah during the episodes of rebellion led by Imam Zaid bin Ali bin Hussain and Nafse Zakiyyah, I absolutely concur with them as far as their historical authenticity is concerned. All the historians are unanimous over the fact that Imam Abu Haneefah had supported them in their respective revolts. But the problem here is that the juristic position of these

episodes greatly varies from their historical position. Imam Abu Haneefah's creed on the issue of rebellion that has been stated in all the authentic books of Hanafi jurisprudence, including *Kutub Zahir alRiwayah*, is that it is unlawful to revolt and rebel against the leader, even if he happens to be a tyrant who has ascended to the post by means of brute force, let alone against one who is just and righteous. Thus, we would either have to strike a balance between these two contrasting views and find common ground or prefer one over the other. As far as giving preference is concerned, we would abide by established juristic principles and prefer the statement of Hanafi jurists over those of historians because the statements coming from the experts of a juristic school are much more reliable in determining the school's creed and doctrine. As for those historians who are jurists as well, like Abu Bakr Razi, alMuwafiq alMakki and ibn Bazzaz, their statements would also not be considered reliable enough because they do not enjoy the same rank and status as that of the actual experts of the school's doctrine, regardless of how meticulous they may have been in adhering to the principles of historiography.

And if we resort to finding some common ground, I would suggest that since the revolt of Zaid bin Ali took place in Safar 122 AH (as you have mentioned), and that of Nafse Zakiyyah took place in 145 AH (again, as you have mentioned), and Imam Abu Haneefah passed away in the year 150 AH (stated by Ibn Katheer in alBidayah, Vol 10, page 107), the Imam was alive for at least five more years after Nafse Zakiyyah's revolt. It can thus be assumed that in his final years, the Imam must have changed his previous opinion to the revised one, which is: 'Revolt and rebellion is unlawful; it is not permissible', after which Imam Abu Haneefah would also have concurred with the other scholars of Hadith that rebellion is not permissible, it is forbidden, and that only 'enjoining the right and forbidding the wrong' would be practiced to seek reformation.

It is probably for this reason that Mulla Ali Qari has said,

و اما الخروج عليهم فمحرم باجماع المسلمين و ان كانوا فسقة
ظالمين (مرقات)

"As far as revolting against them is concerned, there is a consensus among the Muslims that it is forbidden to do so, even if he happens to be an impious tyrant".

[Marqaat]

Now that it has already been proved from the above discussion that Imam Abu Haneefah considered rebellion impermissible, and the ruling on Muslim rebels is that they should be killed (as is evident from the explanations provided by the jurists quoted earlier), my opinion about the Mosul episode is that the version offered by Imam Sarakhsi and Shaikh Ibn alHamam is correct. This incident was related to the pagans held hostage by the Muslims, and had nothing to do with Muslim rebels. This is because the Imam's creed on Muslim rebels is that they should be killed, not that killing them is impermissible. It is another matter that alKardari's narration would have us believe that this episode was related to Muslim rebels.

Reply:

I have received your kind letter. I believe that after all these exchanges you would readily understand my point of view. Please ponder over the following points:

In my essay, I have dealt with Imam Abu Haneefah's 'maslak' (stand) on this particular issue. And what you are presenting in your arguments is the 'mazhab' (creed) of the Hanafi school of jurisprudence. It would not be news to an erudite scholar like you that Imam Abu Haneefah's 'stand' and the 'creed' of the Hanafi school of jurisprudence are two mutually exclusive entities. When we speak about Imam Abu Haneefah's stand, we would only refer to the words and deeds of Imam Abu Haneefah. As for the Hanafi

creed, it includes the opinions of the Imam's companions and the jurists of later times. There are many things that have come to be recognized as part of the Hanafi creed which cannot be traced back to Imam Abu Haneefah or even his immediate companions. Why, we can find even those issues in which the ruling of the Hanafi creed goes against the personal opinion of Imam Abu Haneefah.

Abu Bakr Jassas, alMuwafiq alMakki and Ibn Bazzaz (God have mercy upon them) might not have been ranked among the leading jurists. But they could not have been so naive as to attribute words and deeds to the greatest Imam of their creed without verifying them, especially when they went against his recognized stand. Jassas, in particular, belongs to an age that is very close to that of the Imam. He was born just 155 years after the Imam's demise. While in Baghdad, he had been associated with those Hanafi elders who possessed the intact narrations of the Hanafi school of thought. Had a false narration been attributed to the Imam, Jassas would have been the last person to believe in such a rumour and include it in a book of jurisprudence as important as *Ahkam alQur'an*. And if it would have been proved that the Imam had revised his stand on this issue, he would neither have been unaware of this, nor would he have kept it hidden.

There is another reason why it is not appropriate to assume that the Imam must have revised his stand. For, if such a thing would have occurred, Mansoor would not have been baying for his blood. Instead, he would then have reconciled with the Imam. Moreover, there is not a single person who has said or even hinted that the Imam had ever conceded that participating in the revolt led by Nafse Zakiyyah had been a wrong decision.

In my opinion, there can be no doubt about the fact that the Imam's stand was exactly what he has been reported to have said and done. Having said that, the Hanafi creed that later came to be adopted is the same that you have mentioned. And the reason for this is that the opinion

held by certain Hadith scholars during the tenure of Imam Abu Haneefah came to be accepted by all the adherents of the Ahle Sunnat wa alJamaat by the end of the second century. I have mentioned this opinion in my essay while referring to the statement of Imam Awzai. This opinion was also adopted by the Asha'irah from among the Mutakallimeen (as opposed to the Mu'tazilah). And this opinion came to be adopted not because it is based upon some documented evidence; the horrid experiences of successive past rebellions have had a major role to play here. It is on this basis that the jurists came to understand the revised rulings as vital to the higher objective of Shariah. But I do not find any evidence to substantiate the assumption that the opinion held by the jurists and elders of the first century with regards revolting against an oppressive regime was the same as that advocated by the jurists of later times.

It is also important to note that in the International Colloquium held at Lahore in 1957-58, an English Orientalist had put across the objection that once the Islamic administrative system is rendered corrupt, there is no way by which it can be changed. In support of his claim, the speaker had presented the statements of the Asha'irah and Ahle Sunnat jurists to claim that in case the system becomes corrupt, the truth can only be proclaimed on an individual basis; no collective effort can be expended in this regard. We could not come up with any reply to his objections, save presenting the stand of Imam Abu Haneefah. Now if even this stands rejected, we would not be left with any answer, would we?

As far as fighting the rebels is concerned, it is unanimously accepted that it is permissible to kill their combatants if they happen to be Muslims and it is also lawful to attach the properties of those involved in the rebellion. But is it also correct that it is permissible to slay and loot all the citizens of that area in which they have staged the revolt? If this is exactly how this juristic clause

would be interpreted, then Jazeed's army should stand justified in doing whatever they had done with the citizens of Madinah during the Harrah episode. How can we then explain the strong words in which this act has been disapproved by the Sahaba, the Tabain and the scholars and jurists of later years?

Tarjumanul Qur'an

November 1963 CE - January 1964 CE

Section 4:

Miscellaneous

- **Why was the actual purpose behind Imam Hussain's martyrdom?**
- **The Fate of Western Nations- An Eye-opener**
- **How should the Islamic Movement progress in the Islamic World?**

What was the actual purpose behind Imam Hussain's martyrdom?

This is actually a speech that the author had delivered at a function organized by a Shia leader at his residence in the Muharram of 1380 AH in Lahore. This speech was later edited and published in Tarjumanul Qur'an.

Every Muharram, millions of Muslims- both Shia and Sunni- mourn the martyrdom of Imam Hussain (God be pleased with him). But it is quite unfortunate that very few people actually contemplate over the cause for which Imam Hussain made this immense sacrifice of not only laying down only his own precious life but the lives of his family members as well, including the little children. If a person is oppressed to the point of being martyred, it is natural for his family, and those who love, respect or sympathize with that family, to mourn his death. Such mourning is commonplace all around the world and it is no more than a natural reaction to that person's death. Also, it is limited to his family and near-and-dear ones. But what is it about Imam Hussain's martyrdom that calls for this grief to be revisited each and every year even after the passage of thirteen centuries? If this martyrdom was not attached to a higher cause, there is no point in commemorating it on the mere basis of some personal affection. And what value would the Imam have himself attached to a mere personal affection? If he would have valued his life more than the cause, why would he have sacrificed it in the first place? This sacrifice of his is evidence itself that he valued this cause more than his life. Now if we do not contribute to this cause, and instead keep working against it, then no

matter how much we keep mourning his death and no matter how much we curse his assassins, there is very little hope that on the Day of Judgment the Imam would show any appreciation for us or his Lord would value our mourning.

So what was this cause? Was the Imam laying claim to any personal legacy to the throne? Was it for this that he had risked his life? Any person who is aware of the high moral standards of Imam Hussain's family would never fall for the misgiving that these people could cause bloodshed among the Muslims in order to gain power for their own selves. Even if for a moment it is assumed that this family was staking its claim to power, the entire history of the preceding fifty years- right from the Caliphate of Abu Bakr Siddiq to the rule of Ameer Ma'awiyah- shows that fighting over the throne and spilling blood to attain power had never been part of their ideology. Hence, we have no other option but to accept that the respected Imam must have sensed a major shift in the spirit of the Muslim society and Islamic government and its temperament and its values, and he must have deemed it necessary to launch a decisive struggle to avert it, to the point that he considered it not only permissible but also obligatory upon him to fight in this cause if the need so arises.

What was that shift? It was but obvious that the people had not changed their religion. The government and well as the citizens continued to believe in God and His Messenger and the Qur'an, just as they used to do earlier. The law of the land also remained the same. The Umayyad courts used to pass judgments on all cases in light of the Qur'an and Sunnah, following the precedent of the previous governments. In fact, until as late as the 19th Century CE, none of the Islamic governments have been guilty of changing the law per se. There are certain people who overemphasize upon Yazeed's personal traits. This has led to the common misunderstanding that the sole objective of the Imam's struggle was to prevent a bad person from

assuming power. But even if we are to accept the worst possible version of Yazeed's character that is floated among the masses, it should be understood that if the entire system is working on sound principles, the mere fact that a bad person is at its helm is not reason enough to make a wise and astute leader like Imam Hussain lose his temper, given his keen insight into the intricacies of Islamic Shariah. Thus, this personal issue was also not that 'change' and 'shift' that had made Imam Hussain anxious. A deep study of history makes it obvious that Yazeed being designated the crown prince and his eventual ascension to the throne made for a terrible precedent that marked a shift in Islam's state Constitution, its spirit and its objective. Although the gravity of this change was not clearly evident at that stage, a man of foresight can very easily note a deviation in the vehicle's course and understand that it is departing from its straight path and foresee the destination it would finally take its passengers to. It was this deviation in course that the Imam had noted and it is for the sake of steering the vehicle back to the straight path that he had risked his life.

In order to understand the entire picture, we need to look back at the key elements of the constitution that were being followed during the forty-year period of governance right from the Prophet ﷺ, extending through the terms of the Rightly Guided Caliphs, and then juxtapose them with the key elements that began surfacing in the new system of governance following the designation of Yazeed as crown prince, and which later became completely obvious during the reigns of the Umayyad and Abbasid rulers and the monarchs who succeeded them. This comparison gives us an idea of the track on which this vehicle was previously running and the track on which it began running after this deviation occurred. This comparison also tells us why the person who was raised up in the arms of the Prophet ﷺ and the laps of Syedna Ali and Sayyidah Fatimah, and who

had spent his entire childhood, youth and old age in the pristine company of virtuous Companions, was stirred into action the moment he noticed that this vehicle was deviating from its intended way, and why he did not think twice about the imminent consequences before attempting to steer this vehicle back to the straight path.

The most important element of the erstwhile Islamic state was that the idea of 'Sovereignty belongs to God, the citizens are His subjects and the Government is accountable before God in matters pertaining to these subjects' was not just a hollow claim; rather, it was believed to be so with all conviction, with the practice of the state attesting to this creed and belief. It walked the talk when it proclaimed that 'The Government is not the Master of these subjects, nor are the citizens the slaves of the Government. The Government is expected to- first and foremost- accept the yoke of God's obedience and servitude. It is the Government's responsibility to then execute the rule of God over His subjects'.

However, in the era of human sovereignty that emerged among the Muslims following the designation of Yazeed as the crown prince, the idea of divine sovereignty was relegated to a mere lip service. When it came to the practical arena, the state adopted the same ideology that has been characteristic of every case of human sovereignty till date- that the country belongs to the Emperor and the Royal Family who own the lives, the wealth, the dignity and everything else that belong to the subjects. Whatever divine law that came to be executed in these monarchies was executed only on the ordinary citizens; it hardly ever came to be executed against the Emperor or his family or his council of ministers or governors.

The objective of the Islamic state was to establish and encourage those virtues that are dear to God and to discourage and obliterate those evils that God does not approve of. However, after having adopted the path of monarchy, the objective of the government remains no

more than conquering nations, exploiting the population, collecting tax and tributes and leading an opulent and luxurious life. The monarchs have hardly ever discharged the responsibility of proclaiming the Word of God. They, and their ministers and governors and courtiers, were instrumental in spreading more evil than good. Instead of helping and encouraging those people who strived in the fields of enjoining the good and forbidding the evil, propagation of deen and research and compilation of Islamic sciences, the monarchies helmed them in and tortured them; these noble souls were compelled to carry out their work despite the opposition of the government. Despite their best efforts, the negative influence of the example and policies of the governments and their rulers and associates led the Muslim society towards moral depravity. Things went to such an extreme that these rulers did not even shy away from creating hurdles in the path of propagation of Islam to satiate their own petty interests- a vivid example of which is the *jizyah* that was imposed on newly reverted Muslims during the Umayyad era.

The spirit of the Islamic Caliphate was an epitome of piety and God-consciousness, the best representative of which used to be the head of the government. This spirit pervaded every governor, every judge and every military commander of this government and they used to then imbibe this spirit in every member of the society. But as soon as the system of monarchy was adopted, the governments and the rulers of Muslim society began aping the dynastic ways of the Roman and Persian Emperors- revelling in riches and luxuries, arrogance and contempt. Justice was gradually replaced with tyranny and oppression. Piety gave way to immorality and vice, and the rulers were immersed in music and dance, pomp and splendour. The line between what was permissible and what was not began getting blurred and retained no value in the life and character of these rulers. The bond between politics and virtue started getting weaker and weaker. Far

from having the fear of God in their hearts, these rulers began making the subjects fear them. Far from igniting the flame of faith and righteousness in the people, they began to bribe them into accepting their servitude.

This was the shift and deviation of nature and spirit, objective and ideology. Such deviation was also seen in the fundamental principles of the Islamic Constitution. There were seven fundamental principles in this constitution, none of which came to be spared.

1. The cornerstone of the Islamic Constitution was that the government should be established by the free and democratic will of the people. No person should put in an effort to ascend to the seat of power; instead, the people should select the best person from amongst themselves and entrust him with authority. The *bayt* (pledge of allegiance) should not be an outcome of authority; rather, it should be the other way round. No man should campaign and canvass to receive the pledge of allegiance in his favour. People should be absolutely free to pledge their allegiance to a person or refuse to do so. No person should assume power until he receives these pledges of allegiance. And if the people lose confidence in him, he should not cling to power anymore. Each and every Caliph from among the Rightly Guided Caliphs ascended to authority on the basis of this very rule.

In the case of Ameer Ma'awiyah, the situation turned dubious. It is for this reason that he is not counted among the Rightly Guided Caliphs despite being a Companion. Then, the designation of his son Yazeed as the crown prince served as the final nail in the proverbial coffin and completely overturned this principle. This led to an era of dynastic rule, and the Muslims have till date not been able to revert back to the original democratic system of nominating the Caliph. Thenceforth, the rulers of the Muslim nation came to assume power by force, and not by means of the free and fair consent of Muslims. Now, instead of acquiring power through the pledges of

allegiance, pledges of allegiance came to be acquired through autocratic power. People were no longer free to decide whether they want to offer their pledges or not, nor was the authority of the monarch dependent upon these pledges anyway. The people could not dare refuse to pledge their allegiance to the one who had assumed power and authority. And even if perchance they did refuse, the person who had already assumed power would not budge and relinquish the throne. During the reign of Mansoor Abbasi, when Imam Malik committed the audacious crime of declaring this forced *bayt* null and void, he was flogged and his arms were ripped off his shoulders.

2. The second vital principle of this Constitution was that the nation would be governed by mutual consultation; and this Consultative Assembly would be composed of those members whose knowledge, piety and strength of opinion is recognized by the masses. Although the people who were made members of the Consultative Assembly during the reign of the Rightly Guided Caliphs were not elected via general elections but were 'nominated' to the post, the Caliphs had not appointed them to serve as mere yes-men who would meekly toe their line. Instead, the Caliphs had shown utmost sincerity and selflessness in selecting the best men of the nation, from whom they could expect nothing other than that they would speak the truth upfront, that their knowledge and conscience would egg them on to present the best and most honest opinion, and about whom no one could have the slightest apprehension that they would derail the government from its founding principles. Had the modern system of elections been prevalent in those times, the Muslim population would certainly have reposed their faith in these very nominees.

However, with the advent of monarchy, this system of consultation received a major setback. The monarchs now ruled with an iron fist and turned into dictators. The Consultative Assembly was now composed of princes, sycophantic courtiers, governors and army commanders.

These counsellors were such that had their nomination been subject to general elections, they would have received a thousand curses against every vote. As for those pious scholars who had mass followings and who upheld and spoke nothing but the truth, the monarchs did not consider them trustworthy; rather, they were looked down upon with suspicion and often faced their ire.

3. The third principle of this Constitution was that the people should have complete freedom of expression. Enjoining the good and forbidding the wrong is not only a right but a duty of every Muslim. The Islamic society and government could remain on the right track only as long as the conscience and speech of the citizens would remain free. The people should have the liberty to criticize the highest official on every slip that he makes- undaunted and without the fear of being reproached for speaking up the truth. Not only did the citizens enjoy this right during the reign of the Rightly Guided Caliphs, the Caliphs considered this to be an obligation upon them and even encouraged the citizens to exercise this right. Not only their counsellors, but even the ordinary citizens had every right to speak up, be heard, criticize and question the Caliph himself. Those who exercised this right were neither reprimanded nor threatened, but instead praised and honoured. This freedom was not some kind of favour that the government had bestowed upon them, with which they could burden the people with obligation. Rather, this was a constitutional right that Islam had granted them, and the Caliphs took it as an obligation upon themselves to honour it. Exercising this right for a good cause was a duty enjoined upon each and every Muslim by God ﷻ and His Messenger ﷺ. Maintaining a healthy social and political environment for the fulfilment of this duty was considered by the Caliphs to be an important part of their responsibility.

However, monarchy put a firm seal on the citizens' conscience and gagged their mouths. The revised principle

was that if you want to speak, speak in praise of the ruler or keep your lips pursed. And if your conscience is so restless that you are unable to keep back from proclaiming the truth, then be prepared to be imprisoned or killed. This policy gradually turned the Muslims into weak-hearted cowards who went with the tides. The number of people who were ready to face any danger for the sake of truth and justice began decreasing by the day. The value of sycophants and boot-lickers began increasing in the market and that of outspoken and audacious people began to tumble down. Highly qualified, honest and free-thinking people dissociated themselves from the government. The royal family did not find any place in the hearts of the people, with no citizen having any passion to defend its government. Whenever a foreign royal family attacked the royal family governing them, not one citizen would come forward to protect it, and when the government fell, they would kick it further down the pit. Governments came and went one after the other, but the people remained mute spectators to the turn of events.

4. The fourth principle, that was closely associated with the third, was that the Caliph and his government should be accountable before God and the people. This sense of accountability before God was so intense during the era of the Rightly Guided Caliphs that they were overwhelmed with it, and as far as the accountability before people is concerned, the Caliphs used to consider themselves accountable before the people at all times and places. They did not insist on the protocol that they could be interrogated only after being served a notice in the Consultative Assembly (or Parliament, for that matter). They used to face the public every day during the five congregational prayers. They used to speak to the public and listen to their grievances every week during the Friday congregation. They used to freely roam about in the public day in and day out without any inhibiting entourage of bodyguards surrounding them. The doors of their official

residence (i.e. their mud huts) were open to every citizen, and even an ordinary citizen could meet them. On every such occasion, the citizens were free to question them and demand an answer. This was not a restricted or conditional accountability, but an unrestricted and unconditional one. It was not through the agency of spokespersons, but an open accountability in front of the entire nation. They had come to power with the consent of the public, and the public had all the right to replace them with another Caliph whenever they so desired. Hence, neither were they afraid of facing the public, nor were they ever threatened by the idea of losing their power and authority.

However, the idea of having an accountable government vanished with the appearance of monarchy. Although the claim of being accountable before God remained on their lips, its practical manifestation was seldom seen. As for the accountability before the public, there was not a soul who could dare question them. They were the conquerors of their nation. Have you seen a conqueror who is answerable to the conquered? They had come to power using brute force and they challenged their opponents to overthrow them if they had the strength to do so. It is naive to assume that such people ever faced the public or the public ever got an opportunity to wander close to them. Even if they did offer prayers, they used to do so in the secure and inaccessible masajid of their palaces and not in those masajid which were frequented by the public. If they ever stepped out, they were surrounded by their retinue of loyal bodyguards. Their chariot was escorted by an entourage of armed soldiers and the streets were vacated for them. They never encountered the public, ever.

5. The fifth principle of the Islamic Constitution was that the money in the state treasury belongs to God and it is held as a trust for the Muslims. Money should neither move in nor move out of this treasury by unlawful ways. The Caliph has only as much share in this money as that of the guardian of the orphaned child that has been beautifully

explained in the 6th ayat of Surah anNisa. To paraphrase the ayat, (النساء: ٦) مَنْ كَانَ غَنِيًّا فَلْيَسْتَعِظْ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ 'He whose personal income suffices his needs should feel ashamed at drawing any salary from the state treasury; and if he is indeed in need of a stipend, he should draw only a reasonable sum as salary according to what is acceptable'. The Caliph is accountable for each and every penny of this treasury and the Muslims have every right to question him in this regard. The Rightly Guided Caliphs have shown exemplary honesty and integrity in following this principle as well. Everything that entered the treasury was in accordance with Islamic law and everything that was spent from the treasury was spent under lawful heads of expenditure. The rich worked on an honorary basis; they never claimed even a single rupee from the state treasury. On the contrary, they spent from their own pockets for the welfare of the nation. And those who couldn't afford to render honorary services drew such a paltry salary that every man of reason would find it less than what should have been due to them. Why, even their adversaries could never claim that it was too high a salary! Moreover, every citizen of the nation was free to check the ledgers of the treasury, and the Caliphs used to oblige every citizen who came up with such a demand. Even an ordinary citizen could stand up in a crowd and bluntly enquire from the Caliph, 'How is it that you can afford to wear a long gown, provided the fact that the piece of cloth that was received from Yemen was not long enough? From where have you obtained this extra cloth?'

However, when the Caliphate made way for Monarchy, the state treasury no longer belonged to God and the Muslims; it was now the personal property of the monarch. Wealth used to pour into the treasury by all lawful and unlawful means and used to be spent unbridled on every lawful and unlawful entity. No one had the guts to raise a finger. The entire nation had turned into a free-for-

all feast, with every government official laying his hands on it and hoarding up as much as he could. It never occurred to them that authority was not a licence to licentiousness that allowed them to loot the treasury at will. It never crossed their mind that the state treasury was not their ancestral property from which they could splurge unhindered.

6. The sixth principle of this Constitution was that the law (i.e. the divine law given by God and the Prophet) would reign supreme. No one should be above the law. No one should have the liberty to work with impunity. The same law should apply to every citizen of the state- right from a labourer to the head of state, and it should be equally enforced upon them all. No one should have any extra-judicial privilege and the courts should be free to dispense justice without favour or prejudice. The Rightly Guided Caliphs have led by example in following this principle as well. Despite the fact that they wielded more authority than any monarch ever could, they were absolutely bound by divine law. Neither could their friendship or familial relationship avail anyone when it came to legal matters, nor could their enmity harm anyone in this regard. They were required to file a petition in the court like every other ordinary citizen even in their own personal matters; and if anyone filed a complaint against the Caliph, he could drag the Caliph to the court. They had similarly bound their governors and commanders by the fetters of law. No one could dare pressurize the judges to obtain a favourable ruling. No one could claim any immunity from the law- no matter how high his status.

However, this principle was also relegated to the dustbin once monarchy set in. Not only the monarch and members of the royal family, not only the courtiers and governors and commanders, but even the pampered slaves and slave girls of the royal palace were above the law. They could kill, flog, loot and play with the dignity of any citizen with impunity. Justice now had two standards- one for the

weak and one for the mighty. The courts were coerced into passing favourable judgments. Honest and upright judges were dealt with sternly. The situation reached such a low that the pious and God-fearing jurists preferred getting their backs lashed and getting imprisoned instead of accepting offers for top judicial posts. They feared that serving as a judge in such regimes would inadvertently make them tools to propagate injustice and tyranny, and they would then become liable to divine punishment.

7. The seventh principle of the Islamic Constitution was absolute equality of rights and status among all Muslims. This was implemented with all due care during the era of the Rightly Guided Caliphs. No Muslim was superior to any other Muslim on the basis of his race, community or language. Belonging to a particular family or tribe or lineage did not give any Muslim any special privilege. All those who believed in God and His Messenger were entitled to the same rights and they all had the same status. The only criteria that distinguished one person from the other were his strength of character, merit, competence and skill-set.

However, when the system of monarchy took over, nepotism began raising its ugly head. The members of the royal family and their allies were accorded the highest status. Their tribesmen began enjoying special privileges. Racial prejudices between Arabs and non-Arabs resurfaced. Friction was rife even between different Arab tribes. Historical records testify to the disaster that befell the Muslim nation as a result of this obnoxious system.

Conclusion:

These were those deviations which occurred as a consequence of the Islamic Caliphate getting replaced by Dynastic Monarchy. No person can deny the glaring fact that all these deviations began with the designation of Yazeed as the crown prince. Nor can it be denied that all

the drawbacks of monarchy that we have mentioned above began getting manifested soon after this episode. Although all the aspects of this drawback were not quite obvious when this catastrophic step was taken, every man of insight could foresee the exact consequences of this step. They could see that this step would do away with all the reforms that Islam had made in the field of politics and governance. It is this that Imam Hussain could not tolerate. He decided that no matter how heavy a cost he might have to pay for revolting against a well-established regime, he would *have* to avert this catastrophe. The consequences of this revolt are not hidden from anyone. However, the point that the Imam proved by leaping into this ring of fire and courageously facing the ensuing onslaught was that the fundamental principles of the Islamic state are those priceless assets of the Muslim nation that are worth more than the life of a person. Sacrificing oneself and one's family for the sake of preserving these values is too affordable a bargain for a true believer. The Imam has also shown us that the deviations mentioned above are of apocalyptic proportions and if a believer is required to sacrifice everything he has to save the *deen* and the Muslims from these deviations, he should not hesitate in doing so. People are free to discard this act by calling it a political gimmick, but for Hussain ibn Ali (God be pleased with both) this was a purely religious act. Dying in this cause was an act of martyrdom for the Imam.

Tarjumanul Qur'an
July 1960 CE

The Fate of Western Nations- An Eye Opener

This is actually an editorial that was written by the author for the September 1939 issue of Tarjumanul Qur'an. The Second World War had just begun. Since the editorial criticized the Western nations, the erstwhile Punjab government did not allow it to be published. Having remained unpublished for 19 long years, it was finally published in the February 1958 issue of Tarjumanul Qur'an.

ظَهَرَ الْفَسَادُ فِي الْبَرِّ وَالْبَحْرِ بِمَا كَسَبَتْ أَيْدِي النَّاسِ (٢١:٤١)

"Corruption has appeared throughout the land and sea because of the deeds men have earned"

[Surah arRum ayat 41]

The lava that was building up deep within finally erupted on the earth, polluting the land, sea and air. The sins of avaricious and corrupt elements- in whose hands lie the reins of human destiny today- have finally invited divine fury not only upon their own selves but also on this world that has severed its relation with the Lord and started serving these corrupt elements instead. Now every such thing would befall earth that God has cursed. Towns would be razed. Cattle and fields would be destroyed. Man would kill man with a savagery that would put beasts to shame. Even the kids and women and elderly and sick would not be spared. Everything that man has built exhausting all his effort and intellectual prowess all these years would be annihilated in the blink of an eye. People from weaker nations would be picked up from all corners of the world to be slaughtered mercilessly at the altars of Western lust and greed. The honest sweat of poor and helpless nations would

be siphoned off in various ways and it would be spent on this ugly display of fireworks that the false lords of this world have unleashed on each other. In short, the time has come for mankind to pay for its sins of taking these corrupt elements as their lords and patrons, abandoning God and crossing all limits in serving the Satan.

وَمَا كَانَ رَبُّكَ لِيُهْلِكَ الْقُرَىٰ بِظُلْمٍ وَأَهْلُهَا مُصْلِحُونَ ﴿١١٦﴾ (١١٦)

"And your Lord would not have destroyed the cities unjustly while their people were reformers."

[Surah Hud ayat 117]

It has not been more than 21 years since the Great War had ravaged the entire world for four long years. Ten million people were killed and thirty million people were injured, property worth millions of billions of rupees was wiped out, entire nations and empires were destroyed and a severe crisis cascaded upon the moral, spiritual, cultural and political lives of people from one end of the globe to the other. It is not for nothing that the First World War was called the Great War! But even such a colossal tragedy could not open up the eyes of the atheist political lords of European countries; they have raised the banner of an even graver devastation after the passage of just two decades. How could they have done this when the shocking and terrifying consequences of the previous war are looming right before their eyes! This proves that they are blind at heart. They have sold their souls to the devil. Nothing can now warn and admonish them until the divine verdict uproots their evil plots and plans once and for all and makes them destroy one another in a way that would relegate them to mere tales for later generations to read.

وَكَذَٰلِكَ أَخَذَ رَبُّكَ إِذَا أَخَذَ الْقُرَىٰ وَهِيَ ظَالِمَةٌ إِنَّ أَخَذَهُ أَلِيمٌ شَدِيدٌ ﴿١٠٢﴾ (١٠٢)

"And thus is the seizure of your Lord when He seizes the cities while they are committing wrong. Indeed His seizure is painful and severe." [Surah Hud ayat 102]

One of the astonishing features of European policy makers is that all the while they keep conspiring against each other in secret; but as soon as the bubble of their misdeeds is about to burst each of them presents himself as the apostle of peace and reform, the custodian of truth and justice and the enemy of suppression and tyranny. He then tries to convince the world that 'All I want is peace and reform; it is my opponent who is adamant upon injustice and tyranny. Come and assist me in purging the world of his evil'. But the fact remains that they are all the same. They are all torchbearers of oppression and corruption. Their hands are dripping with the blood of innocent victims. They are all guilty of the crimes they accuse each other of. It has become habitual of them to deceive the world by posing as champions of moral values and humanity, democracy and human rights while actually pursuing their own vested interests. Foolish and gullible people living under their influence naively come to believe that they are indeed fighting for the sake of truth and justice and are thus lured into supporting them in their wicked pursuits. This also allows all those sycophantic people who are eager to ally with them for their own shallow interests to present themselves as the patrons of a just cause and come out clean before the world.

The ungodly scheme of spreading corruption and vice and then ostensibly claiming *إِنَّمَا نَحْنُ مُصْلِحُونَ* 'We are but reformers' [Surah alBaqarah ayat 11] has been unmasked in the First World War itself. The sordid tales of World War I are not hidden from anyone. Everyone knows the reasons why England, France, Italy and Russia had allied with each other and what common objectives compelled Germany and Austria to come together, what were those interests that had convinced these two groups to fight each other and what plans they had devised to divide nations and split-up empires amongst themselves. But does anyone also recall how both these camps had tried to deceive the world with their tall claims at the beginning of the war and even while

the battles were raging on? Had they not claimed that we are fighting for no other reason than to save the world from injustice and oppression and to allow weaker nations to attain the freedom and liberty that they deserve?

Then, when one group emerged victorious, how diligently did it fulfil its promises? What vivid examples of following and advocating truth and justice have they presented before the world? How generously have they bestowed the favour of liberating weaker nations and providing justice to oppressed mankind? Ask these questions to the people of India, Iraq, Syria, Palestine, Egypt, Georgia, Thrace, Tunisia, Algeria and Morocco to get the answers.

They have once again donned their pretentious cloak to address us thus: 'We have no vested interest in entering this battle arena. Instead, we have participated in this war to safeguard those principles that guarantee the development of all humanity. Our objective is to protect universal justice and universal values from falling into ruin. We wish to establish this golden principle in the world that civilized men should sit across the table and settle their disputes by means of sound reason and not by means of brute force. It is our desire that the law of the jungle should not prevail when it comes to the issues plaguing mankind. It should no longer happen that the weak is forced to obey the mighty, regardless of who is right and who is wrong. If we do not wage war to attain these noble goals, civilized people would find it difficult to lead a decent life. Human souls would be bound in shackles and the doors to peaceful progress of human culture and civilization would be closed forever. We say this because if our opponent succeeds in his attempts to unleash the rule of coercion and autocracy, it would spell disaster for the entire human civilization.'

اقتی نہ بڑھاپا کی داماں کی حکایت دامن کو ذرا دیکھو ذرا بند قبادیکھو

Good Lord! Look who's talking about Universal Justice and Values. Since when has the freedom of the

human soul become so valuable to you that you are willing to sacrifice your wealth and life for its sake? Since when have you come to accept this principle that 'civilized men should sit across the table and settle their disputes by means of sound reason and not by means of brute force'? Since when has the law of the jungle ceased to be a part of your *modus operandi* and when was the last time Your Majesty stood by the weak, for the truth and for justice?

فَلَا تَزْكُوا أَنْفُسَكُمْ هُوَ أَعْلَمُ بِمَنِ اتَّقَى (النجم: ٣٢)

"So do not claim purity for yourselves; He is most knowing of who fears Him [Surah anNajm ayat 32]

Ironically, every page of your Book of Deeds testifies to those crimes against which you are blowing the bugle. Your innumerable conquests and offshore colonies bear witness that you are the first and the foremost culprits in propagating the law of the jungle. Every chapter of your Imperialistic history provides ample evidence of the fact that you have never flinched from sacrificing universal justice and values for the sake of achieving commercial and political gains. Wherever it was possible for you to succeed using brute force, you have never entertained the principle that civilized men should sit across the table and settle their disputes by means of sound reason. But why go so far in the past at all? Even today, even as your blessed lips are speaking about those noble objectives that you so vociferously claim to uphold, you are yourself defeating all those objectives in Palestine. With all these past and current misadventures tainting your record, the only ones you would be able to fool with your flowery discourse are your blind followers; those with seeing eyes would never fall for it. How long would this drama continue?

لَا تَحْسَبَنَّ الَّذِينَ يَفْرَحُونَ بِمَا أَتَوْا وَيُجِبُّونَ أَنْ يُحْمَدُوا بِمَا لَمْ يَفْعَلُوا فَلَا

تَحْسَبَنَّاهُمْ بِمَقَارِفِهِمْ مِنَ الْعَذَابِ (ال عمران: ١٨٨)

"And never think that those who rejoice in what they have perpetrated and like to be praised for what they

did not do - never think them to be in safety from the punishment, and for them is a painful punishment."

[Surah Aal' Imran ayat 188]

The things that have led to this war are known to one and all. The foundation stone of this war was laid the very day the previous war had ended. Those who are raising the banner of truth and justice and universal values today are the same people who had implemented the law of the jungle the moment they had emerged victorious then. They began dividing countries amongst themselves the way dacoits divide the loot amongst themselves, the way goats and cattle are divided. They then bartered one nation for another. And while they were busy doing this, they chose to forget the virtuous claims they had made during the war. The treatment they meted out to the vanquished nations was no different than that meted out to a prey in a jungle—the weak was forced to obey the mighty, regardless of who was right and who was wrong. They assaulted and kept assaulting the dignity and prestige of proud and vibrant nations to such an extent that the latter finally became mad with fury. They lost their mental balance and were overwhelmed with a severe existential crisis. It was because of this crisis that the Turkish nation, which shared profound spiritual relations with the Muslim world for no less than five hundred years, developed an extreme sense of nationalism; and it has yet to regain its mental balance. Take the example of the great German nation. It has been at the vanguard of all recent developments in science, philosophy and sociology and whose strides in the field of academics are the most illuminating ones in these dark ages. But when this crisis broke upon them, it evoked a passionate sentiment of nationalism within the Germans and they surrendered themselves to that misguided philosophy of life and autocratic political ideology which, under normal circumstances, cannot be accepted by any civilized, educated and right-minded community.

Thus, the ascendancy of Nazism in Germany, the cascade of tyranny, terror and coerciveness and the fervor of aggressive belligerent imperialism is a direct result of the Germans' uninhibited lust and greed. How audacious it is for them to claim that it is to establish universal justice and to replace the law of the jungle with the law of moral virtue that we have picked up the gun! This is the practical manifestation of the opening ayat of this article, and it is now getting unfolded in blood and destruction.

Even today, it is absolutely wrong to assume that they have realized the consequences of their lust and greed and are now sincerely fighting for the establishment of universal justice. The fact remains that universal justice is being violated right under their nose for several years. It has been violated in China, Abyssinia, Albania, Austria, Bohemia, Spain and a host of other countries. Why had their sentiment of justice and preservation of human civilization remained dormant on those occasions? Is it the case that human beings reside only in Poland? Is it only the Polish population that was required to be freed from the law of the jungle? Were those millions of people of Chinese, Abyssinian, Albanian, Czech and other nationalities not human enough? Why, then, was the law of the jungle allowed to prevail among them?

Why don't you come out in the open and bluntly state that the actual issue pertains to overseas colonies and what really scares you is that after annexing Poland, Germany would demand the colonies that had been taken away from her after World War I, and this newly rising power would then defy your dominance over your hitherto unchallenged superiority over large parts of the world? That you want to nip this challenge in the bud? That this is the actual purpose of entering the battle arena, not the ostensible safeguard of humanity that has already been subjected to the law of the jungle since the past century and a half?

Now, if this is the actual motive behind the war, it would be extremely credulous of the world to believe that

this war is a skirmish between good and evil. In fact, there is nothing but evil on both sides. Truth and justice are not part of the agenda of any party in even the slightest measure. Both parties are fighting to achieve their own goals. One group desires that no other nation should impose the law of the jungle in those countries where it has already imposed this law. The other group wants to re-impose this law in those countries where it is already being imposed. Given this situation, if any person still falls for the myth that one of these two groups is fighting in the cause of truth and justice, God alone can have mercy upon his intellect. And if any person has worn the deceptive mask of righteousness to conceal his wicked objectives, I pray that God lays bare his real intentions.

There can be nothing more astonishing in this amazing world than the fact that it is now being said to those very people on whom the law of the jungle has been prevailing since the past century and a half and where disputes between people have always been resolved using brute force instead of making them sit across the table and have them amicably resolved that 'Come, help us in putting an end to this law of the jungle and the usage of this brute force'. Those who are themselves deprived of human rights and freedom and subdued by autocratic rule are now being asked to sacrifice their life and property for the protection of human rights and freedom and the abolition of autocratic rule! They are then further lured into it by saying, "There is no place on earth where these noble principles (for the sake of which we entered the war) are valued more than they are here, in India. No other nation understands the importance of safeguarding them more than you do. We firmly believe that in these tumultuous times when everything that is vital to human civilization is at stake, India would most surely rally her forces behind this endeavour to safeguard human rights and freedom against autocratic rule and participate in this task in a manner that befits its position of being one of the greatest nations and oldest civilizations of the world."

Wonderful! Each and every word of this appeal is worth being preserved in history as a golden example of 'moral audacity'.

This appeal was being made to Indians at the very same time when India's Commander in Chief was making the following comments on the field report:

"India's actual borders extend to Malaya and Singapore in the east and Egypt, Jordan and the Persian Gulf to the west. If these countries are not ruled by her allies, then take it for granted that India would become vulnerable from both sides".

This defence tactic of setting up the political and defence borders of a country several hundreds of thousands of miles away from its natural borders, and then to either conquer those bordering countries to or bring those governments under their command to make sure that they remain under the rule of their 'allies' is the essential crux of Imperialism and the root of all wars. It is this very ideology that gives rise to a never-ending series of interests and requirements. In order to protect and sustain these, Imperialistic powers keep expanding their borders, and they would never get satisfied until they make sure that the entire world is brought under the rule of their 'allies'. In order to protect their declared borders, they draw up defence borders at locations thousands of miles away from their homeland. Then, in order to protect these defence borders, new defence borders are set up thousands of miles away from the previous defence borders, and so on and so forth....

These imperialistic ideas are busy occupying their minds even as they are trying to convince the world that all they want to do is to crush the military might of those who are enemies to mankind. It is all too clear that there is absolutely no difference in the moral standards of the warring parties. There is no reason why humanity should choose one over the other. Both have the same ideology, the same principles, the same goals and the same line of

approach. Then what is it exactly that sets them apart from each other?

Opportunist people, who have no principles of their own to adhere to, who sell themselves for their personal and communal interests at the drop of a hat, are destined to walk in darkness. But a Muslim person has his course chalked out for him. His being a Muslim itself means that he adheres to a principle, a law and a code of conduct in his life. No matter what, a Muslim is expected to stay firm on his principles. Wavering from these principles would be akin to allying oneself with those people who do not have any regard for Islamic principles whatsoever.

One of these fundamental principles that the Qur'an stipulates for Muslims is that:

إِنَّ اللَّهَ اشْتَرَى مِنَ الْمُؤْمِنِينَ أَنْفُسَهُمْ وَأَمْوَالَهُمْ بِأَنْ لَهُمُ الْجَنَّةُ ۖ (التوبة: ١١١)

"Verily, God has purchased the lives and wealth of the Believers in exchange of Paradise"

[Surah atTaubah ayat 111]

This means that every Believer is purchased by God the very moment he accepts Islam. He is no longer free to re-sell or waste away his already sold-off life and wealth; they now belong to God, he is a mere trustee. He is morally obliged to spend this life and wealth that has been entrusted to him in the cause of God in accordance with His laws and injunctions. This is because the deal he has entered into requires him to fulfil the wishes of the Purchaser. However, if he sells it off to someone else, it would only mean that he is selling something that has already been sold to God. This would amount to a crime, a sin. And if he lays it waste, it would amount to a misappropriation of the trust.

The deal that a Muslim has struck with God, and the deal that makes him a Muslim in the first place, makes it binding upon him to abide by the divine law in offering his life or taking the life of someone else. This divine law says that, "Do not take life- which God has made sacred- except for a just cause" [Surah Bani Israil ayat 33]. The Believers

have been praised in the Qur'an as "They do not take life- which God has made sacred- except for a just cause". In both these ayaat, 'life' refers to his own life as well as the life of another person. This entails that neither would a Muslim offer his life for an unjust cause, nor would he kill anyone unjustly.

This 'just cause' has been explained in the Qur'an thus:

وَقَاتِلُوهُمْ حَتَّى لَا تَكُونَ فِتْنَةٌ وَيَكُونَ الدِّينُ لِلَّهِ (البقرة: ١٩٣)

"Fight them on until there is no more fitna (tumult and oppression), and the deen (complete obedience and loyalty) becomes exclusive for Allah".

[Surah alBaqarah ayat 193]

This tells us that the obedience and loyalty to someone other than Allah and prevalence of someone else's laws is in itself *fitna*. Abolishing this *fitna* is the 'just cause' for which a Muslim person is expected to sacrifice or take the life that God has otherwise made sacred. Tumult and oppression spreading on the earth is worse than killing someone [Surah alBaqarah ayat 191].

The same idea has been explained in the 76th ayat of Surah anNisa':

الَّذِينَ آمَنُوا يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ وَالَّذِينَ كَفَرُوا يُقَاتِلُونَ فِي سَبِيلِ

الطَّاغُوتِ (النساء: ٧٦)

"Those who believe fight in the cause of Allah, and those who disbelieve fight in the cause of taghut"

This is the fundamental difference between the believers and disbelievers. A Muslim fights to proclaim the word of God, to make sure that the divine law that He has revealed through His Messengers to establish justice among human beings should prevail on earth. On the contrary, a disbeliever fights to meet the interests of those who have crossed all limits of wickedness, injustice and oppression.

جاء رجل الى النبي صلى الله عليه وسلم فقال الرجل يقاتل للمغنم، والرجل يقاتل للذكر، والرجل يقاتل ليرى مكانه، فمن في سبيل الله؟ قال من قاتل لتكون كلمة الله هي العليا فهو في سبيل الله-

A person once asked Prophet Muhammad ﷺ, "If there is a person who fights for booty and there is another person who fights for name and there is yet another who fights for prestige, then who among them is fighting 'in the cause of God'?" The Prophet replied, "Only he who fights to proclaim God's name fights in the cause of God".

There is another Hadith which says that

جاء رجل الى النبي صلى الله عليه وسلم فَقَالَ يَا رَسُولَ اللَّهِ مَا الْقِتَالُ فِي سَبِيلِ اللَّهِ فَإِنْ أَحَدُنَا يُقَاتِلُ غَضَبًا وَيُقَاتِلُ حِمِيَةً؟ فَرَفَعَ إِلَيْهِ رَأْسَهُ فَقَالَ مَنْ قَاتَلَ لَتَكُونَ كَلِمَةُ اللَّهِ هِيَ الْعُلْيَا فَهُوَ فِي سَبِيلِ اللَّهِ-

A person came to the Prophet ﷺ and asked him, "O Messenger of God, which is the fight that qualifies as 'in the cause of God'? Some people among us fight for vengeance and some others for the sake of tribal prejudices." At this, the Prophet raised his head and said, "The fight of only that person is 'in the cause of God' who fights to proclaim the name of God".

In contrast, if a person fights to proclaim the name of other men, so that some human beings might achieve their interests at the expense of other human beings, then the Prophet ﷺ has this to say for him:

يَجِيءُ الرَّجُلُ آخِذًا بِيَدِ الرَّجُلِ فَيَقُولُ إِنَّ هَذَا قَتَلَنِي فَيَقُولُ اللَّهُ لَمْ قَتَلْتَهُ فَيَقُولُ لَتَكُونَ الْعِزَّةُ لِفُلَانٍ فَيَقُولُ إِنَّهَا لَيْسَتْ لِفُلَانٍ فَيَبْرَأُ بَائِثُهُ-

"On the Day of Judgment, one man would come holding the hand of another man and complain to God that he had murdered him. God would ask him why he

had murdered him. He would reply that he had murdered him so as to establish the superiority and prestige of so-and-so person. God would point out that that person did not actually deserve superiority and prestige. The burden of the murdered person's sins would then be placed on the murderer."

All these teachings are absolutely loud and clear. All that is happening these days is pure *fitna* when seen from the Islamic perspective. If a Muslim should at all fight, he must fight to wipe out this *fitna* from the face of the earth and uphold the superiority of God. As for his participation in this *fitna* and his act of fighting under the banner of disbelief to proclaim the superiority of disbelief, let it be known that he is not allowed to do so while remaining a Muslim. If anyone still wants to do this, it would be better for him to discard the mask of Islam and openly become a part of those people whose name he wishes to proclaim.

Tarjumanul Qur'an

Jamadil Awwal 1377 AH/ February 1958 CE

How should the Islamic Movement progress in the Islamic World?

This lecture was delivered by Syed Abul Ala Maududi in Masjide Dahlvi, Makkah on the 16th of ZilHajj 1382 in Arabic. The audience was made up primarily of young men belonging to various Arab nationalities.

It is my privilege to address this audience today, which has gathered in the headquarters of Islam for this international convention of Hajj from all corners of the Islamic world, and tell them what the true believers, especially their educated youth, are expected to do in contemporary times. I want to make the most of this precious and once-in-a-lifetime opportunity to pour my heart out, so that you might understand what is actually going on in this world today and the factors that are contributing to those developments. This would allow you to coordinate with your governments and civil societies to work towards reform by adopting the steps that I consider most appropriate. 'So let the ones present here convey this message to those who are not'.

The two parts of the Islamic World:

At the outset, let it be clear to you that the Islamic world is currently divided into two major blocks. The first part comprises of those areas where the Muslims are in minority and the political reins are held by non-Muslims. The second part comprises of those areas where the Muslims are in majority and the government is in their hands. It is natural for the second of these two parts to command more importance. The future of the Muslim

community is largely dependent upon the stand and the approach that is- and would be- adopted by independent Muslim nations. Even so, the first part is also no less important. It holds a unique status of its own. The substantial presence of adherents of a specific ideology and creed in strengths of hundreds of millions already dispersed all over the world can afford great strength to those who pull up their sleeves to establish that ideology and creed. However, if this ideology and creed gets subverted in its own home turf, then it is all too likely that the followers of this ideology who are dispersed all over the world and who are already being dominated upon would not be able to hold their ground for long. It is on this basis that I can safely say that the future of the Islamic world is hinged upon the future of these Muslim nations- from Indonesia and Malaya in the east to Nigeria and Morocco in the west. This is what is apparent to the eye. It is an altogether different case if God shows us a miracle that overrides human calculations. He can cause springs to burst out of rocks and turn deserts into lush green orchards if He so desires.

The Condition of Independent Muslim Nations

Continuing with our proposition that the future of the Islamic world is linked to that of Muslim nations, let us now analyze the condition of these Muslim nations and what are the factors that have led to it.

You are aware of the fact that after a long period of mental stagnation, intellectual decline, moral degradation and materialistic decay, most of the Muslim nations eventually succumbed to Western colonialism. This process that began in the 18th Century CE reached its zenith at the beginning of this Century. Only a handful of Muslim nations were saved from being directly affected by the political subservience of Western colonial powers. However, defeat after defeat had made their condition worse than that of slave countries; they came to be

dominated and terrified much more than those countries which had surrendered their political leadership to the West.

The Fruits of Western Colonialism

The most disastrous outcome of Western colonialism was that which manifested itself in the form of our mental subjugation and moral degradation. Ravaging our countries and engaging in a mass genocide would probably have been a lesser tragedy than the wrong they have inflicted upon us by means of their academic curricula, by imposing upon us their culture and lifestyle and by spreading moral corruption. Their typical policy in every Muslim country that fell under their dominion was to destroy its educational system. And if they were unable to dismantle it completely, they saw to it that the students graduating from its traditional institutions were rendered useless in society. Another vital part of their policy was to devalue the local language of the conquered nations. The native languages were no longer allowed to serve as the medium of education and they ceased to be the official language of the government. They were replaced by the language of the conquerors. This policy was replicated by all Western colonial powers in all Muslim countries from the east to the west. The Dutch, the British, the French, the Italians were all hand in glove. In this way, these colonialists were able to raise a generation from amongst ourselves that was, on the one hand, ignorant of Islam and its teachings, oblivious of its creed and values and unaware of its history and tradition, and on the other hand, had its mentality and line of thinking and perspective moulded in the cast set by the West. This initial crop was followed by successive generations that kept getting farther away from Islam, immersing themselves in the deluge of Western philosophy, lifestyle, culture and tradition. They found it distasteful and below their dignity to converse in their native tongue, whereas speaking in the language of the conquerors became

a matter of pride and prestige. While the Western conquerors took immense pride in being Christians and were openly prejudiced in its favour, their conquered subjects started getting ashamed of their Muslim identity and unabashedly expressed their rebellion against Islam. While the Western colonialists honoured their lame and outdated traditions, these slaves could see honour only in deriding their traditional heritage. The Western colonialists never adopted Muslim attire or lifestyle despite spending a lifetime in Muslim countries. But these enslaved people, who lived in their own countries, began aping the foreigners' attire, their lifestyle, dietary habits, culture and even their mannerisms, looking down upon their own traditions with disdain. Following in their footsteps, they also gulped down the venom of materialism, atheism, vain prejudices, nationalism, immorality and liberalism. It got entrenched in their minds that whatever emanates from the West is the absolute truth, adopting it is the only way to progress and development and turning away from it amounts to nothing but retrogression.

It was the standard policy of Western colonialists to grant positions and ranks to such enslaved people in accordance with the affinity they had developed with Western culture and the aversion they had developed against Islam. The more influenced the person, the higher was his rank and position. As a result, and as a natural consequence of this policy, these people were conferred the highest ranks in government offices. They bagged all the key military and civil posts. All important political offices were chaired by such people and it was these people who became leaders of political parties. Consequently, it was these who entered parliament as public representatives and it was these who influenced the economic lives of Muslim countries.

When these Muslim countries witnessed a wave of freedom struggles, it was but natural- almost imperative- for these people to lead these struggles. For it was these

people alone who could speak in the language of the rulers, it was these alone who were familiar with their temperaments and it was these alone who could gain proximity with them. Thus, when these countries began getting independent, the reins of authority were passed on to them and they became the political successors of the colonialists. This had to happen because even during colonial rule, it was these people who held political influence, it was these who ran the civil administration and it was these who held top military posts.

Certain outstanding features

Right from the initial days of colonial history to its culmination and the beginning of the independence era, there are certain outstanding features that we need to look out for. We would never be able to completely understand the current situation if we ignore them.

The first point is that at no place on earth- in the entire colonial history- were the Western colonialists able to turn the ordinary Muslim folk away from Islam. Yes, they did spread misguidance and they did bring down the moral standards of the people to a good extent. They even abrogated Islamic laws to replace them with their own, which made the Muslims accustomed to lead un-Islamic lives. But despite all this, there is not a single nation that renounced Islam en bloc under their influence. The ordinary citizens of all these countries are as attached to the Islamic creed today as they were earlier. They may not know Islam well, but they still believe in it. So deep is their attachment with Islam that they are not ready to settle for anything else. Their moral character has nosedived and they have developed very bad habits, but their values are intact, their ideals have remained untouched. They may have indulged in usury and fornication and alcohol, but save a few brainwashed people, you would not encounter anyone who does not consider these acts forbidden and impermissible. They might not forego the pleasures of

music and dance and other lewd acts, but save a small Westernised group, the vast majority of Muslims would never accept these as their culture. Similarly, several successive generations of these colonized Muslims have spent their entire lives under Western law, but they have yet to get convinced of the merits of this law vis-a-vis Islamic law, which they refuse to put down as obsolete and outdated. No matter how religiously the Westernised minority might have devoted itself to the Western law, the vast majority of Muslims have always believed in the superiority of Islamic law, and are still longing for its implementation.

The **second** point that needs to be noted is that religious scholars have always shared a close rapport with the populace. They speak their language and represent the creed and faith that the common folk attest to. But they have absolutely no say in the state administration. Also, because of being completely dissociated from worldly affairs for many years, they are no longer capable of guiding the Muslims on the political front, nor are they competent enough to take the reins of power in their own hands and manage the affairs of the state. Hence, they could not lead the freedom struggle in any Muslim country and, consequently, could not participate in the government after its independence. The role of religious scholars in our collective lives is more or less that of a brake. The driver of the car is the Westernised class and this brake keeps the car from accelerating beyond a certain limit. But this brake has failed in certain countries and the car is accelerating unhindered down a gorge, while its drivers are living in a fool's paradise, convinced that they are cruising towards their summit.

The **third** point is that although the freedom struggle of all these countries was led by none other than this Westernised class, they were never able to mobilize the masses or convince them to make sacrifices without appealing to them on religious grounds. They were required

to attract the public in the name of Islam at every place and occasion. All appeals had to be made in the name of Allah, His Messenger and the Qur'an. In every country, they had to convince the public that this freedom struggle was a battle between Islam and disbelief. Without doing so, they could not expect the public to rally behind them. Now this is one of the greatest betrayals in the history of mankind, having no parallel whatsoever, that immediately after having achieved independence, these people turned a blind eye to all the promises they had made and their first target was the same Islam that they *used* to win the freedom struggle.

The **fourth** point is that the independence these Muslim nations have achieved under their leadership is merely a political independence. The only difference between the previous slavery and this independence is that the reins of authority were earlier in the hands of foreigners and now they are in the hands of natives. But there has been no change in the mentality of the people who hold these reins and the perspective and values they hold dear. The same educational system that was established by the colonialists continues to this day. The laws they had legislated are still being enforced and all new laws are being legislated following the same pattern. Why, the Western colonialists were far better in this regard. While they had never dared to intervene in the Personal Laws of Muslims, the legislators of independent Muslim countries are doing just that. The ideas of culture and tradition, morality and social etiquette that the colonialists had left us with are encouraged even now. In fact, the leaders of independent nations are outdoing their colonial predecessors in pushing their citizens in the abyss of that culture and corrupting their moral values. They are unable to think beyond the concept of nationalism that was offered to them by the West. It is on this concept that they are running the affairs of Muslim countries, and it is because of this that Muslim nations have been torn apart. Atheism has

got entrenched in their psyche. Wherever possible, they are corrupting the younger generations of Muslims to such an extent that they have come to ridicule God, His Messenger and the hereafter. Not only are they themselves neck deep in licentiousness, they are spreading immorality and vice among the ordinary Muslims as well. The fact remains that no matter how much these people claim to oppose Western colonialism, Western colonialists are dearer to them than anything else in this world. They are smitten and enamoured with everything they do. Every word they speak is regarded as a gold standard. Every gesture of theirs is emulated. The only difference between the Colonialists and these leaders is that they are men of intellect and these are mere blind followers. They are inept at flinching an inch from their beaten path and paving new roads for themselves.

If you keep these four points in mind and analyze the prevailing state of independent Muslim nations, you would at once understand the entire current situation. All the independent Muslim governments are getting completely undermined. This is because they are in conflict with the collective conscience of their citizens. Their citizens yearn to go back to Islam, but they are busy dragging them towards Western values. As a result of this tug of war, the citizens of not a single Muslim nation have their hearts inclined towards their governments. A government remains strong as long as the arms of the rulers are in sync with the hearts of the public and they come together for a common constructive cause. In contrast, if the heart is in conflict with the arms, all their energies are spent in clashing against each other, leaving nothing to spend on constructive and productive work; the wheels of progress and development thus come to a screeching halt.

The repercussions of this internal conflict:

As a natural consequence, Emirates are getting established in various Muslim countries one after another.

The miniscule minority of the Westernized class, which has succeeded the colonialists, knows too well that if the government remains at the mercy of the electorate they would not remain in power for long; sooner or later, authority would get transferred to those who would be considerate towards the desires and aspirations of the public. It is for this reason that they are not allowing democracy to flourish anywhere, preferring absolute power instead. It is another matter altogether that they deceptively refer to their emirates by the terms democracy and republic.

In the initial few years, the reins of authority were held by the politicians belonging to this class and the Muslim nations were run by bureaucrats and civil servants. But it was not long before their military realized- and this was also a natural consequence of the situation we have discussed earlier- that they were the real backbone of the emirates' strength. This sense of entitlement soon drew the military commanders to the political arena and they began toppling the governments in army coups, amassing all power in their own hands. Now, the situation in Muslim countries is such that their own military has become a pain in their neck. Their task is no longer to defend the country against foreign threats; their task is now to conquer their own countries. They are using the weapons given to them by their governments for the country's defence to enslave their own countrymen instead. The future of Muslim nations are no longer decided by elections or parliament, they are now being chalked out in army barracks. Moreover, these armies are not unanimous in choosing their leader. Every military officer is waiting in ambush to hatch a conspiracy and assassinate the incumbent leader to replace him. Every such successor comes in riding the chariot of glory but is soon dismissed and overthrown on charges of corruption and treason. Almost all Muslim nations have now turned into mute spectators; they have no say in the administration of their own countries. They are kept in the dark about uprisings brewing in secret and one

fine day they wake up to find themselves in the midst of turmoil. What is albeit common among all these revolutionary military leaders is the baggage of Western influence they carry. They are as much mental slaves of the West as their predecessors were and do not lag behind them in promoting atheism and impiety either.

A ray of hope:

But there still exists a light at the end of the tunnel. You see, God has made these torchbearers of atheism and impiety fight each other and they are busy destroying each other. Had they been united, they would have turned into an incurable nuisance. They are being led by the Satan, and the plans of Satan are always weak. Also, in contrast, the hearts of Muslim nations are absolutely untouched and untainted. They are not at all pleased with these 'revolutionary leaders'. It is quite possible that if there arises a righteous group which is Muslim by ideology and is capable of leadership, it would eventually prevail and Muslim nations would be spared the rule of these atheist and impious leaders.

Opportunities and Course of action:

Right now, the real opportunity rests with those people who have obtained Western education but whose hearts are brimming with faith in God, His Messenger, the Qur'an and the hereafter. Those who have received traditional religious education can definitely support them on the moral, spiritual and religious fronts, but unfortunately, they are not equipped with the leadership skills that are required to run a country. These skills are currently being possessed by the ones educated in modern education, and it is they who are required to come forward. I would now offer them some guidelines. So please pay heed.

1. Obtain the correct knowledge of Islam

They should obtain the correct knowledge of Islam, so that not only their hearts but even their minds become Muslim. This would make them capable of running public affairs in accordance with Islamic injunctions and principles.

2. Self-purification

They should purify their moral conduct so that their lives may mirror the Islamic teachings that they believe to be true. Always remember that any incompatibility between one's words and deeds is a sign of hypocrisy. Such a person loses credibility among the masses. Your success depends entirely upon your sincerity and honesty. No person can ever be sincere or even considered sincere whose actions do not match his words. If such incompatibility is found in your own life, neither would others have faith in you, nor would you have any conviction over your own self. Hence, it is my sincere advice to all those people who are working in the cause of Islam that they should try their best to inculcate within themselves everything that Islam has enjoined and refrain from every such thing that Islam has forbidden.

3. Critical appraisal of Western Culture and Philosophy

They should expend all their resources and energies to write and speak against Western thought and ideology and culture and philosophy and try to demolish this idol that is being worshipped the world over. They should present and propagate Islamic creed and principles and lifestyle as an attractive alternative in a way that it convinces the modern generation of its merits. They should instil confidence in their minds that not only is it possible for a modern nation to achieve progress and development by following Islamic creed and principles and rules but it is also possible for it to

outdo others. If this campaign is conducted in a proper manner and on a large scale, you would be able to attract a large number of foot-soldiers for this cause from each and every walk of life. This should be a long-term campaign so as to prepare a sea of volunteers whose only desire would be to see their country's administration function on Islamic lines. Until this campaign does not reach its climax, you cannot hope for any meaningful Islamic revolution. Bypassing this, even if you do succeed in pulling off a revolution, it would soon collapse like a pack of cards.

4. Organization

All those people who are impressed by the Islamic cause need to get organized. This organization should not be lame and loose. The coming together of like-minded individuals cannot be entirely fruitful unless this organization is run with a strict discipline and with a passion to 'hear and obey' the instructions of the leader.

5. Mass appeal

The people working in this cause should reach out to the masses so that the ordinary folk are stirred out of their ignorance and they get introduced to the values of Islam and they understand the difference between Islam and ignorance. They should also strive towards the moral reformation of society and exert all their efforts to stem the deluge of immorality and vice that is inundating the minds of the Muslim populace thanks to their impious leadership. The bitter fact is that once people fall into moral deprivation, they no longer remain capable of being citizens of an Islamic state. The more the level of moral deprivation in society, the more difficult would it be to run an Islamic government amongst them. Liars, fraudsters and immoral people befit a pagan institution, but they have no place in an Islamic state.

6. Patience and Wisdom

They should not make haste in orchestrating an Islamic revolution on loose foundations. The objective we seek to achieve requires immense patience. Every step should be taken with utmost deliberation; and before taking the next step we should be absolutely sure that the results we have obtained in the previous step have been secured. Any step taken in haste might prove counterproductive. For example, it is usually hoped that participating in the government with a corrupt leadership would make our task easier and we would be able to achieve our goals quickly, achieving some desirable milestones in the process. But practical experience tells us that such a strategy, no matter how alluring, does not reap any fruitful result. This is because those who are at the helm of affairs are only concerned with pursuing their own policies; those who collaborate with them are forced to make compromises at every level, to the point that they are eventually relegated to the status of mere pawns on their political chessboard.

7. Abstention from Violent and Underground Movements

My final advice to the volunteers working in this cause is that they should steer away from running underground movements or engineering violent revolutions. This is but another example of impatience and haste, and can have disastrous consequences. A proper revolution is always a mass movement. Spread the word unhindered- to all and sundry. Create a renaissance of thought and ideology. Change the way people think. Use the sword of your character to bleed their hearts. Bravely face the challenges and dangers that you encounter in this path. The revolution that would follow this gradual and painstaking process would be so firm and resolute that the storms raised by enemy camps would hardly make it flutter. Even if a hasty revolution does get pulled off by employing artificial

means, it would be quickly wrapped up and shown the door.

These are some guidelines that I am sharing with those who are working for the Islamic cause. May Allah guide us all and may He give us the strength and ability to strive towards the establishment of the true deen in the best possible manner.

Tarjumanul Qur'an

